

California Attorney  
General's Office

*Women's  
Rights*

Handbook  
1998



# A Message to the People of California

The Women's Rights Handbook has been prepared by the Office of the Attorney General as a summary of women's rights in important areas such as employment, economic independence, education, housing, health care, domestic relations, violent crimes and child care. It also provides other valuable information related to those rights. There is, for example, a section on crimes of violence against women and children, and where victims can get help.

In recent years, largely as a result of hard work by countless individuals and organizations concerned with women's rights, courts and legislatures have taken many steps to strengthen guarantees of equal opportunity for women in our society. By the mid-1970s, the need was apparent for a concise reference work in this rapidly changing field.

Accordingly, the first **Women's Rights Handbook** was published by the Attorney General's Office in 1976-77. The booklet was so well received that it was expanded by supplement in 1980, and reissued in revised form in 1983, 1987, and 1990. The 1998 edition of the **Women's Rights Handbook**, like its predecessors, contains the most current information on new laws and services that benefit women.

While women will find this book of special interest, much of the information concerns laws prohibiting discrimination on the basis of race, color, religion, age and disability, as well as sex. Therefore, it will be useful to all persons concerned about fair and equal treatment in employment, economic transactions, housing, business establishments, and other areas.

Although a number of topics in this handbook are the subject of intense political debate, it is not our purpose here to take a position on them. Rather, in presenting current federal and state laws, we believe this publication, provided as a public service, can be of assistance to all Californians.

## **Acknowledgements**

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# INTRODUCTION

The **WOMEN'S RIGHTS Handbook** is intended to provide the general public with a basic understanding of the rights of women in California. This handbook describes both California and federal laws that deal with issues important to most women. This handbook is not meant to be used in the place of a qualified attorney. If you feel that your rights have been violated, you should seek qualified legal assistance. For information on how to find an attorney, see the "Directory of Services" at the back of this book.

The handbook is divided into eight chapters which discuss the legal rights of the women of California - - employment, economic independence, education, housing, health care, domestic relations, childcare and violent crime, and a directory of services. Each chapter discusses your rights with respect to the designated topic, and provides information on where you can seek help if you feel that your rights have been violated.

The directory is an extended resource section that provides information on a wide range of resources available to women in California. The directory is not a complete list of every women's organization in California. However, many of the organizations listed can help by referring you to an organization that will address your specific question or problem.

To provide a comprehensive overview of women's rights, this handbook discusses both California and federal laws relating to women. Where appropriate, citations to statutes, regulations, court cases and opinions of the California Attorney General are provided. Below is an explanation of the various citations you will see throughout the book.

## Statutes

Statutes are laws passed by legislators either in the state Legislature or in the national Congress. Statutes are generally short and do not describe in detail how the law will be enforced.

### Examples of statutes are:

42 U.S.C. § 2000  
Gov. Code, § 12940

The first citation is to a federal statute. It refers to a statute that can be found in the 42nd volume of the United States Code, beginning at section 2000.

The second citation is a California statute. It refers to a statute that can be found in the



California Government Code, section 12940. If the "12940" were followed by the term "et seq.," it would be a citation to section 12940 and the following sections.

Laws are constantly changing, so there are updated supplements in the back of both the federal and state code books.

## **REGULATIONS**

Various government agencies are often charged with developing regulations to carry out the mandates of particular statutes. These regulations describe in greater detail how the statutes are to be enforced.

Examples of regulations are:

29 C.F.R. § 1608  
Cal. Code Regs., tit.10 § 2560.3

The first citation is to the 29th volume of the Code of Federal Regulations (C.F.R.) beginning at section 1608.

The second citation is to Title 10 of the California Code of Regulations, section 2560.3. The California Code of Regulations was previously called the California Administrative Code and may still be cited that way in some places.

## **COURT CASES**

Courts of law make decisions about whether certain actions constitute a violation of the law, and whether or not particular laws are constitutional. The United States Supreme Court is the highest court in the country, and the California Supreme Court is the highest court in the state. Most cases cited in this handbook are cases that were decided by one of those two courts.

Examples of case citations are:

*Wygant v. Jackson Board of Education* (1986) 476 U.S. 267.  
*Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458.

*Wygant* was a case decided by the United States Supreme Court in 1986. It can be found in volume 476 of the United States Reports beginning on page 267.

*Gay Law Students Assn.* was a case decided by the California Supreme Court in 1979. It can be found in volume 24 of the California Reports, Third Series, beginning at page 458.

## **OPINIONS OF THE CALIFORNIA ATTORNEY GENERAL**

Finally, there are occasional references in this handbook to opinions of the California Attorney General. Opinions of the Attorney General are opinions written by the Attorney General's office in response to questions by state legislators or other public officials or agencies about the legality of a particular object or action. Opinions of the Attorney General are solely an indication of the likelihood of the legality of an object or action. Only the courts can actually make such decisions. The opinions of the California Attorney General **do not** have the force of law.

An example of an opinion of the Attorney General is:

69 Ops.Cal.Atty.Gen. 80. (1986)

This opinion can be found in the 69th volume of the Opinions of the California Attorney General, beginning on page 80. It was issued in 1986.

# CHAPTER ONE

## EMPLOYMENT

**Employment discrimination is generally illegal.** Article 1, section 8 of the California Constitution provides that a person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin.<sup>1/</sup> Article 1, section 31 of the California Constitution (added by Proposition 209, also known as the California Civil Rights Initiative) provides in relevant part that the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. It has been found to be constitutional by the Ninth Circuit (*Coalition for Economic Equity v. Wilson* (9th Cir. 1997) 110 F.3d 1431), and the United States Supreme Court denied a petition for certiorari on November 3, 1997. There are both federal and California laws prohibiting imposition of discriminatory conditions of employment by employers, employment agencies, labor organizations and training programs. However, federal and California laws that prohibit employment discrimination differ in scope and with respect to the groups covered and actions outlawed.

**Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) is the federal law applicable to most cases of employment discrimination.** Title VII outlaws employment discrimination based on race, color, religion, sex or national origin. (42 U.S.C. § 2000e-2.)<sup>2/</sup> Title VII applies to employers with 15 or more employees.

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1. The Court of Appeal recently ruled that this public policy against discrimination does not protect independent contractors. (*Sistare-Meyer v. Young Men's Christian Association of Metropolitan Los Angeles* (1997) 58 Cal.App.4th 10.)

2. This handbook will primarily cover sex discrimination and sexual harassment in employment. For further information on discrimination on the basis of age, race, color, national origin, religion and sexual orientation, see the latest handbook on Civil Rights published by the California Attorney General.

(42 U.S.C. § 2000e.)<sup>3/</sup> Employers who receive federal funds are also prohibited from discriminating on the basis of physical and mental disability. (Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.) Disabled employees are also protected by the Americans with Disabilities Act (ADA); 42 U.S.C. § 12111 et seq.,<sup>4/</sup> and employees with substance abuse problems are protected by the Alcohol and Drug Rehabilitation Act (ADRA, Lab. Code §§ 1025). The federal Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., prohibits age discrimination against those over 40 years of age.<sup>5/</sup>

**The Fair Employment and Housing Act (FEHA, Gov. Code, §§ 12900 et seq.) is the California law that deals most directly with employment discrimination.** The FEHA is broader in scope than Title VII. The FEHA prohibits discrimination in employment based on race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition (controlled cancer), marital status, sex or age (over 40)<sup>6/</sup> (Gov. Code, §§ 12940-12941.)<sup>7/</sup> The FEHA generally covers employers with five or more employees, whether employed full-time or part-time.<sup>8/</sup> (*Robinson v. Fair Employment & Housing Com.* (1992) 2 Cal.4th 226.) However, it prohibits harassment by any employer with one or more employees. (Gov. Code, § 12940(h)(3)(A); religious associations or corporations not organized for private profit are not considered to be employers, according to Government Code section 12926(d)(1).)

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3. Both Title VII and the Age Discrimination In Employment Act have limited application to United States citizens working abroad.

4. For further information on this topic, see the latest edition of the California Attorney General's Handbook on the Legal Rights of Persons with Disabilities.

5. In a recent decision, the Court of Appeal found that an employer's use of salary levels to differentiate between employees in a layoff is not age discrimination under the ADEA or the Fair Employment and Housing Act, because it is considered to be a reasonable factor other than age, even if cost-based layoffs had a disproportionate effect on older workers generally. (*Marks v. Loral Corp.* (1997) 57 Cal.App.4th 30.

6. Many older women feel doubly disadvantaged in the job market. There are organizations in California and nationally that help women over 40 who feel that they have been discriminated against or who are trying to gain re-entry into the job market. (See Chapter Nine, Directory of Services, for the names of these organizations.)

7. See footnotes 1 and 4, supra.

8. The Court of Appeal has ruled that a temporary employee could file suit under the FEHA when she was passed over for full-time employment and was allegedly fired because she filed a complaint with the Department of Fair Employment and Housing. (*Sada v. RFK Medical Center* (1997) 56 Cal.App.4th 138.)

**Although the FEHA does not cover employment discrimination based upon sexual orientation, Labor Code §1101 et seq. prohibits this form of discrimination.** For purposes of these sections, the definition of employer excludes "a religious association or corporation not organized for private profit, whether incorporated as a religious or public benefit corporation." (Lab. Code, § 1102.1.) However, the time within which to file a complaint is very short. Accordingly, if you feel that you have been discriminated against because of your sexual orientation, you should contact the California Labor Commissioner right away. (415-975-2080.)

**The Equal Pay Act of 1963 (29 U.S.C. § 206 (d)) and the California Equal Pay Act (Labor Code § 1197.5) are also integral to the protection of women's employment rights.** However, they are much narrower in scope than either Title VII or the FEHA. The two Equal Pay Acts do exactly as their titles suggest---they guarantee equal pay for equal work.

**You cannot be paid less than a man because of your sex,** unless otherwise required or permitted by regulation. (29 U.S.C. § 206(d)(1); Labor Code § 1197.5; Cal. Code Regs., tit. 2, § 7291.1(a)(1).)

**It is unlawful for an employer to pay you less because you are not the principal wage earner or head of your household.** (*Dean v. United Food Stores, Inc.* (D.N.M. 1991) 767 F.Supp. 236.) Likewise, it is unlawful for an employer to condition the availability of fringe benefits on whether you are the head of your household. (Health plans may provide greater benefits to employees with dependents than to those without dependents, or to those with fewer dependents.) (Gov. Code, § 12940(a)(3)(B); Cal. Code Regs., tit. 2, § 7291.1(b)(2).)

**Taken together, the above laws require that women and men be treated fairly and equally when applying for a job,** and in all aspects of the job---hiring, firing, wages and benefits, training, and advancement through promotion or transfer. The law says there cannot be different pay scales for male and female employees who perform equal work; that is, jobs performed under similar working conditions that require the same skills, effort, and responsibilities must be equally compensated. The law outlaws employment practices that treat male and female employees unequally, and practices that appear neutral, but have a disparate impact on the employment of men and women. (*Watson v. Fort Worth Bank and Trust* (1988) 487 U.S. 977, 991.)

**Federal and California laws that prohibit discrimination in employment deal with a whole range of employment issues,** from hiring practices to retirement age. This chapter discusses the organizations covered by these laws. It explains illegal discriminatory hiring practices and describes a few instances in which discriminatory hiring is illegal. It also discusses legal guarantees of equality of

employment benefits and working conditions. Finally, this section describes resources to contact if you feel that you have been discriminated against and have decided to seek a legal solution.

**The employment rights of women discussed in this chapter have been primarily drawn from some combination of Title VII, the FEHA and the Equal Pay Acts.**

However, other noteworthy laws, court cases, administrative findings and opinions of the Attorney General will be cited where applicable.

## **ORGANIZATIONS COVERED**

Laws prohibiting discriminatory actions with respect to employment are not limited to discrimination by employers. They also cover discrimination by labor unions, employment agencies and training programs. The purpose of this section is to provide a broad survey of potential employment practices that are discriminatory and therefore illegal.

### **Employers**

**It is generally unlawful for an employer to engage in any of the following practices on the basis of your sex:**

- Refusing to hire you.
- Refusing to select you for an apprentice program.
- Refusing to choose you to go through a training program that leads to being hired.
- Taking you out of a training program that leads to being hired.
- Firing you.
- Paying you less.
- Denying you benefits.
- Discriminating against you in any way.
- Harassing you.
- ! Refusing to allow you to take a pregnancy disability leave or a family care leave (if eligible).

### **Labor Organizations**

**It is generally unlawful for a labor organization to engage in any of the following practices on account of your sex:**

- Refusing you or excluding you from membership.
- Providing you with an inferior, segregated, or separate membership.

- Refusing to allow you to participate in the elections of officers, staff or organizers.
- Refusing to allow you to participate in the union at the office holders' level.
- Discriminating against you in any way.
- Harassing you.

## **Employment Agencies**

**It is generally unlawful for an employment agency to engage in any of the following practices on the basis of your sex:**

- Refusing to allow you to apply for a particular position.
- Refusing to refer you to a potential employer.
- Discriminating against you in any way.
- Harassing you.

## **Training Programs**

**All of the discriminatory practices illegal for an employer to engage in are also outlawed for training programs.** Therefore, it is generally illegal for a training program to engage in any of the following practices on the basis of your sex:

- Refusing to hire you.
- Refusing to select you for an apprenticeship program.
- Refusing to allow you to go through a training program that leads to being hired.
- Taking you out of a training program that leads to being hired.
- Firing you.
- Paying you less.
- Denying you benefits.
- Discriminating against you in any way.
- ! Harassing you.

What's more, California law requires apprenticeship training programs to include women within their affirmative action plans. (Gov. Code, §12940(a).) <sup>9/</sup>

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9. Some or all of the California state and local government affirmative action programs may be invalidated by the courts in light of the passage of Proposition 209.

For more information on apprenticeship training programs, contact:

**California Department of Industrial Relations/Division of Apprenticeship Standards**, that has offices in Fresno, Los Angeles, Oakland, Sacramento, San Francisco, San Jose, and Santa Ana.

## **Licensing**

**It is unlawful for a licensing board to require any examination or establish any other qualification for licensing that has an adverse impact on any class by virtue of sex unless such practice can be demonstrated to be job-related.** (Gov. Code, § 12944(a).) It is unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines approved by the Fair Employment and Housing Commission (FEHC), to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, that expresses, either directly or indirectly, any limitation, specification or discrimination as to sex, or any intent to make such limitation, specification or discrimination. (Gov. Code, § 12944(c).)

## **HIRING PRACTICES**

### **Unlawful Discrimination in Hiring**

#### **Looking for Work**

From the moment you start looking for work, you are covered by the laws that make employment discrimination illegal.

**Job and help wanted advertisements are for anyone.** It is illegal for an employer, advertising agency or union to advertise for only male or only female job applicants, unless being male or female is absolutely necessary to job performance, for example, if the employer, advertising agency or union is looking for a woman to model brassieres. So, if you are looking for a job, you are legally entitled to apply for any job for which you believe you are qualified. (42 U.S.C. § 2000e-2(b); Gov. Code, § 12940(d).)

**Employment agencies must refer all qualified applicants.** It is unlawful for an employment or placement agency to discriminate in job referrals against a woman solely on the basis of her gender, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations. When you go to an employment agency, list all your qualifications and ask to be referred to all job



listings whose requirements meet your qualifications. (42 U.S.C. § 2000e-2(b); Gov. Code, § 12940(d).)

**Company hiring departments must interview equally.** When an employer has its own "company" or internal hiring department, it must provide fair and equal methods for interviewing interested job applicants. It may be unlawful for an employer to fill job openings by relying solely on the recommendations of its own employees. This would constitute a practice neutral on its face, but which is prohibited because it freezes the status quo of prior discriminatory employment practices and has a disparate impact on minorities. (*Griggs v. Duke Power Co.* (1971) 401 U.S. 424.)

**If an employer considers prior work experience when hiring or promoting, unpaid volunteer work experience must also be considered.** (Cal. Code Regs., tit. 2, § 7291.0(d).)

## **Job Applications**

**When you apply for a job, most employers will ask you to fill out a questionnaire or job application form.** The form may ask questions, such as whether you are male or female, or your height and weight. Such questions are lawful, as long as they are asked of all job applicants, and as long as the information is used for legitimate jobs screening/record-keeping purposes and not to discriminate. (29 C.F.R. § 1604.7; Cal. Code Regs., tit. 2, §§ 7286.7(b) and 7287.3(b)(1).) An employer may only ask questions about your health that are directly related to the working conditions of the job involved and whether you would endanger your health or the health or safety of others. Once you are hired, an employer may ask for additional information, if necessary, for any insurance or other fringe benefit program. That information may not be used in a discriminatory manner. (Gov. Code, §§ 12940(a)(1); 12940(d); Cal. Code Regs., tit. 2, §§ 7286.7 and 7287.3(b)(1) and (2).)

**An employer may not ask you questions about childbearing, pregnancy, birth control, or family responsibilities** unless they are related to specific and relevant working conditions of the job in question. (Cal. Code Regs., tit. 2, § 7290.9(b)(3).)

## **Job Requirements**

**With only a few exceptions, it is unlawful for an employer to set requirements for employment that would restrict those eligible to only male or only female applicants.** (The few legal exceptions are listed and explained in the next section, Lawful Discrimination in Employment.) An employer may not refuse to consider your application for employment simply because he/she assumes that women are

not physically able to do the job in question.

**Use of minimum height and weight restrictions is limited to cases where such restrictions are clearly necessary for safe and efficient job performance.** (*Dothard v. Rawlinson* (1977) 433 U.S. 321, 332; Cal. Code Regs., tit. 2, §§ 7286.7; 7290.8; and 7291.1.)

**An employer may not use separate height and weight requirements for men and women,** unless pursuant to a permissible defense, such as a bona fide occupational qualification (BFOQ). (42 U.S.C. § 2000e-2e; Cal. Code Regs., tit. 2, §§ 7286.7 and 7291.0(b)(2).)

**An employer may not make generalizations about physical ability or sex.** For example, an employer may not refuse to hire a woman for a particular job solely because the employer believes that women are "too weak" for the job. You have a right to demonstrate your capability to perform a job. (29 C.F.R. § 1604.2; Cal. Code Regs., tit. 2, § 7291.0(a).)

**An employer may not discriminate against a particular gender because of customer preference.** For example, it is unlawful for an employer to have a policy of hiring only men because its customers do not like being served by women. (29 C.F.R. § 1604.2(a)(1)(iii); Cal. Code Regs., tit. 2, § 7290.8(a)(3).)

**An employer may not discriminate against a particular gender because of traditional job classifications.** For example, a women's clothing store may not refuse to hire a male sales clerk just because selling women's clothes is a traditionally female occupation. (29 C.F.R. § 1604.2(a)(1)(ii); Cal. Code Regs., tit. 2, § 7290.8(a)(5).)

**An employer may not discriminate against one gender because the workplace has facilities for only one gender.** For example, an employer may not refuse to hire women because there are no women's bathrooms on the premises. (29 C.F.R. § 1604.2(b)(5); Cal. Code Regs., tit. 2, § 7290.8(a)(4).)

**An employer may not refuse to hire an applicant because she is of childbearing age.** (29 C.F.R. § 1604.10; Gov. Code, § 12940(a); Cal. Code Regs., tit. 2, § 7290.9(b)(3).)

**An employer may not usually consider your marital status in deciding whether to hire you.** An employment application may ask whether you have ever used another name, but this information must be used only for checking your past work experience, or for other non-discriminatory purposes. (29 C.F.R. § 1604.4; Cal. Code Regs., tit. 2, § 7292.4 0(a).)

**An application may ask whether your spouse is currently employed by that employer.** This information may not be used in determining whether you should be hired, unless that particular job presents problems of security, supervision, morale or safety if both spouses are employed by the same employer. An employer may refuse to place both spouses in the same department if the employer can show that, for business reasons of supervision, safety, security, or morale, such placement would cause potential conflicts of interest or other hazards that would be greater than problems caused by the placement of persons other than married couples. (Cal. Code Regs., tit. 2, §§ 7292.4(c) and 7292.5.)

## **Dress Codes**

**It is an unlawful employment practice for an employer to refuse to permit an employee to wear pants** on account of the sex of the employee, except that an employer can require employees in a particular occupation to wear a uniform, and can require an employee to wear a costume while that employee is portraying a specific character or dramatic role. (Gov. Code, § 12947.5.)

## **LAWFUL DISCRIMINATION IN EMPLOYMENT**

**There are rare circumstances in which an employer may discriminate.** These practices are lawful only if there are no less discriminatory alternative practices available. Examples of discrimination that may be lawful follow.

### **BFOQs - (Bona Fide Occupational Qualifications)**

**An employer may discriminate against an entire class of persons if it can be shown that the practice is justified** because certain people are not able to safely and efficiently perform the job, but this is a very difficult defense to prove. The employer must prove that the discrimination is necessary to preserve the legitimate nature of the business. Privacy considerations are one example of a BFOQ. If the job requires an employee to observe others in a state of nudity or conduct body searches, then the employer may possibly limit the job to members of the sex to be observed and searched. However, job duties involving such activities must be assigned so as to maximize the number of jobs for which either men or women are eligible. In a prison environment, allowing female officers to view male inmates in partial or total nudity does not violate inmates' rights of privacy if female contact is minimal, professional, and necessary to further the correctional system's legitimate goals and policies. (42 U.S.C. § 2000e-2(e); 29 C.F.R. § 1604.2; Gov. Code, § Cal. Code Regs., tit. 2, § 7286.7(a) and § 7290.8).)

## **Affirmative Action Plans**

**Bona fide affirmative action may be a valid defense to employment actions that would otherwise be unlawful discrimination.**<sup>10/</sup> An employer may adopt a voluntary affirmative action plan, for example, setting aside a certain number of new trainee positions for women, so long as the affirmative action program meets certain tests set out by the U.S. Supreme Court. A bona fide affirmative action plan must break down traditional (past) discrimination, without unnecessary interference with the rights of other employees. Such a plan must be narrowly tailored to the achievement of its goal of remedying past discrimination, must not operate as an absolute bar to others, and should be of limited duration. (*Wygant v. Jackson Board of Education* (1986) 476 U.S. 267, 278; *Local 28 of the Sheet Metal Workers v. EEOC* (1986) 478 U.S. 421, 484-489; and 29 C.F.R. § 16081.1 et seq.)

## **Veterans**

**Veteran's preference laws have been held legal** (*Personnel Administrator of Mass. v. Feeney* (1979) 442 U.S. 256), and veteran's preference is expressly permitted under California law. (Gov. Code, § 12940(a)(4).)

## **WORKING CONDITIONS AND BENEFITS**

### **Equality of Working Conditions**

**Federal and state laws prohibit sex discrimination with regard to either the conditions of your workplace or the employment benefits you receive.** (42 U.S.C. § 2000(e); Gov. Code, § 12940(a).)

**If rest periods are provided, the conditions and amount of time must be equal for both sexes.** (*Burns v. Rohr Corp.* (N.D. Cal. 1972) 346 F.Supp. 994; 29 C.F.R. § 1604.2(b)(4); Cal. Code Regs., tit. 2, § 7291.1(e)(1).)

**Equal access to comparable and adequate toilet facilities must be provided to employees of both sexes.** Locks may be installed on common facilities to ensure privacy. (29 C.F.R. § 1604.2(b)(5); Cal. Code Regs., tit. 2, § 7291.1(e)(2).)

**An employer may not consider sex when providing clerical assistance, office space, or any other support service.** (Cal. Code Regs., tit. 2, § 7291.1(e)(3).)

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10. But see footnote 9, supra, for validity of local or state statutory or regulatory affirmative action programs.

**An employer may not assign job duties according to sex stereotypes.** (Gov. Code, § 12940(a); Cal. Code Regs., tit. 2, § 7291.1(e).)

### **Family School Partnership Act (FSPA)**

**Labor Code section 230.8 provides that no employer who employs 25 or more employees at the same location shall discharge or in any way discriminate against an employee who is a parent, guardian or grandparent having custody of one or more children in kindergarten or grades 1 to 12 <sup>11/</sup> for taking off up to 40 hours each school year,<sup>12/</sup> not to exceed eight hours in any calendar month, to participate in activities of the school of any child, if reasonable notice is given. The employee shall ordinarily utilize existing vacation, personal leave or compensatory time-off for the planned absence. Written documentation from the school as proof of participation may be required. (See also Lab. Code § 230.7 regarding right of employee to be free of discrimination for required appearance in school after a child is suspended.)**

### **Continuation of Insurance Benefits**

**Plan sponsors of employee benefit plans that provide medical insurance are required to offer continuing coverage for persons who would otherwise lose their coverage because of the death of their spouse, termination from employment, a reduction of work hours, or as a result of divorce or separation.** (29 U.S.C. §§ 1161-1169.) If any of these events occurs, you should contact your plan sponsor to notify them that you want to continue medical coverage. The plan sponsor is required to provide you with information regarding rights and responsibilities relating to continuing coverage.

**Any employee who is discharged, threatened with discharge, demoted, suspended or in any other manner discriminated against in the terms and conditions of employment because of rights exercised under this section shall be entitled to reinstatement and reimbursement for lost wages and work benefits.** Any employer who wilfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration or hearing authorized by law, shall be subject to a civil penalty in an amount equal to three times the amount of the employee's lost wages and work benefits. The Division of Labor Law Enforcement

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11. Effective January 1, 1998, the FSPA was broadened to cover employees with children attending a licensed day-care facility. (Assem. Bill No. 47, 1997-1998 Reg. Sess.)

12. Effective January 1, 1998, this provision was modified so that employees may take up to 40 hours of leave in a calendar year. (Assem. Bill No. 47, 1997-1998 Reg. Sess.)

enforces the above-mentioned provisions. (See government listings in the white pages of your telephone book.)

## **Sexual Harassment**

**You, as an employee or job applicant, but not as an independent contractor, have an absolute right to be free from sexual harassment** related to your employment. (42 U.S.C. § 2000e-2; Gov. Code, § 12940 (h).) Sexual harassment includes, but is not limited to, verbal harassment, physical harassment, visual forms of harassment, and sexual favors. (Cal. Code Regs, tit. 2 § 7287.6(b)(1).) It must be severe or pervasive enough that it adversely affects the victim's work environment. (*Meritor Savings Bank v. Vinson* (1986) 477 U.S. 57, 64-67; *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608-609.)

**In determining whether the harassment is sufficiently severe or pervasive to be actionable, California appellate courts judge it on a case-by-case basis, based on the reasonable person of the same gender standard.** (*Fisher v. San Pedro Peninsula Hospital, supra*, 214 Cal.App.3d 590, 609, n. 7.) At the federal level, the Ninth Circuit has adopted a gender specific standard. (*Ellison v. Brady* (9th Cir. 1991) 924 F.2d 872, 878-888.) In *Harris v. Forklift Systems, Inc.* (1993) 510 U.S. 17, 21, the Supreme Court used the term "reasonable person" in its discussion, but did not approve or disapprove the use of a gender-specific standard. In a post-*Harris* decision, the Ninth Circuit formulated a "reasonable person with the same fundamental characteristics" standard. (*Fuller v. City of Oakland* (9th Cir. 1995) 47 F.3d 1522, 1527.) The FEHC, which enforces the FEHA, has not adopted a gender-specific standard in a precedential decision.

**Sexual harassment does not have to be outright or obvious to be illegal.** Nor does the conduct have to result in the loss of some tangible employment benefit to be actionable. (*Peralta Community College Dist. v. Fair Employment & Housing Com.* (1990) 52 Cal.3d 40, 52.) Conduct that implies sexual demands are being made, such as verbal, symbolic or pictorial gestures that make work difficult for you, is illegal. (Cal. Code Regs., tit. 2, § 7287.6.) California law prohibiting sexual harassment in the workplace applies to all employers in California, except for religious nonprofit organizations,<sup>13/</sup> regardless of how few or how many people they

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13. The California Supreme Court has before it two cases in which it will decide how to determine if an organization qualifies for the religious nonprofit exemption from the FEHA. (*Kelly v. Methodist Hospital of Southern California*, Case No. S053888, review granted, August 14, 1996); and *McKeon v. Mercy Healthcare Sacramento*, Case No. S054783, review granted, August 14, 1996.)

employ. (Gov. Code, § 12940(h).)<sup>14/</sup>

**It is illegal for an employer to base employment decisions, such as hiring, firing or promotion, on whether or not you submit to sexual demands.** (29 C.F.R. § 1604.11; Gov. Code, § 12940(h); Cal. Code Regs., tit. 2, § 7287.6(b)(1)(D).)

**Sexual harassment that creates a hostile or offensive work environment for members of one sex is also unlawful.** (Gov. Code, § 12940(h);) Cal. Code Regs., tit. 2, §§ 7287.6(b)(1) and 7291.1(f)(1); 29 C.F.R. § 1604.11(a)(3).)

**It is not necessary that the plaintiff show that he/she has suffered actual psychological injury.** (*Harris v. Forklift Systems, Inc.*, *supra*, 510 U.S. 17, 22.) A plaintiff may be able to establish a "hostile work environment" under the FEHA, even if he/she was not personally the target of the harassing conduct, if her/she personally witnessed it in his/her immediate work environment. (*Fisher v. San Pedro Peninsula Hospital*, *supra*, 214 Cal.App.3d 590, 611.) The creation of a hostile work environment does not have to involve sexual advances, as long as gender is a substantial factor in the discrimination and if the plaintiff had been a man, he would not have been treated in the same manner. (*Accardi v. Superior Court* (1993) 17 Cal.App.4th 341, 348.)

**Rights of free speech** of other employees must be accommodated. (Cal. Code Regs., tit. 2, § 7287.6(b)(1)(E).) Thus, a male employee may be free to quietly possess, read and share Playboy magazine at work. (*Johnson v. County of Los Angeles Fire Dept.* (C.D. Cal. 1994) 865 F. Supp. 1430, 1442.) The California Supreme Court has before it a case in which it will address the question whether verbal harassment of an employee by a supervisor at work (in that case racial epithets) can be enjoined by a court without violating the free speech rights of the supervisor. (*Aguilar v. Avis Rent A Car System*, Case No. S054561, review granted September 4, 1996.)

**Harassment because of sex** includes sexual harassment, gender harassment, harassment based on pregnancy, childbirth or related medical conditions and same-sex harassment. (Gov. Code, § 12940(h)(3)(C); *Mogilefsky v. Superior Court of Los Angeles County* (1993) 20 Cal.App.4th 1409.) The United States Supreme Court recently decided that same-sex harassment could violate Title VII. (*Oncale v. Sundowner Offshore Services, Inc.* (1998) \_\_\_ U.S. \_\_\_, 98 Daily Journal D.A.R. 2100.)

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14. A Court of Appeal has ruled that the FEHA does not apply to non-residents working for California-based companies where the sexual harassment took place outside California. (*Campbell v. Arco Marine, Inc.* (1996) 42 Cal.App.4th 1850, 1852.)

**Employers may be held responsible for acts of their employees.** Employers' liability for employees is different under state and federal law. Specific law should be consulted, but an employer is strictly liable under state law for harassment by supervisors,<sup>15/</sup> even if the employer did not know about the harassment. (Gov. Code, § 12940(h)(1); Cal. Code Regs., tit. 2, § 7287.6(b)(2); 29 C.F.R. § 1604.11(c); *Kelly-Zurian v. Wohl Shoe Company* (1994) 22 Cal.App.4th 397, 415.)<sup>16/</sup> Under Title VII, employers are liable for supervisor sexual harassment in quid pro quo situations, where the victim's submission to sexual advances or conduct is made a condition of an employment benefit. (*Nichols v. Frank* (9th Cir. 1994) 42 F.3d 503, 513-514.) However, the United State Supreme Court has, to date, declined to issue a definitive rule on employer liability for supervisor harassment in pure hostile work environment cases. (*Meritor Savings Bank v. Vinson*, *supra*, 477 U.S. 57, 69-73.)

**An employer may not be liable for sexual harassment by a supervisory employee if the employee is found to have been off-duty** and away from the workplace when he/she committed the harassment. (*Capitol City Foods, Inc. v. Superior Court of Sacramento* (1992) 5 Cal.App.4th 1042; however, see *Doe v. Capital Cities* (1996) 50 Cal.App.4th 1028, where the court found complainant did adequately plead a cause of action for sexual harassment against ABC for rape of an actor by a casting director on a Sunday at the cast director's home, because the reason the complainant was at the director's home was sufficiently work-related.)

**Employers may be responsible for sexual harassment by co-workers and non-employees, where the employer knew or should have known of the conduct and failed to take immediate and appropriate action.** (29 C.F.R. § 1604.11(d) and (e); Gov. Code, § 12940(h)(1); Cal. Code Regs., tit. 2, § 7287.6(b)(3).) Additionally, supervisors may be individually liable for personally engaging in harassment under state law (*Page v. Superior Court* (1995) 31 Cal.App.4th 1206, 1210-1217), or if they substantially assist or encourage continued harassment (*Matthews v. Superior*

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15. A Court of Appeal recently confirmed that an individual in the chain of command over an employee who has been invested by the employer with sufficient authority in the employment workplace that he or she has sufficient actual or reasonably perceived power or control or direction in the work environment to significantly affect an employee's employment status is a supervisor for whose quid pro quo or hostile work environment sexual harassment the employer is strictly liable under the FEHA. (*Lai v. Prudential Insurance Company of America* (1998) \_\_\_\_ Cal.App.4th \_\_\_\_, 98 Daily Journal D.A.R. 2654.)

16. A romantic relationship between a supervisor and an employee does not, without more, give rise to a sexual discrimination or sexual harassment claim under the FEHA or the public policy of the state. (*Proksel v. Gattis* (1996) 41 Cal.App.4th 1626, 1627.)



*Court of Los Angeles County* (1995) 34 Cal.App.4th 598, 603-606, <sup>17/</sup> although not under Title VII.<sup>18/</sup> (*Miller v. Maxwell's International, Inc.* (1993) 991 F.2d 583, 587-588.)

**Unlike Title VII, the FEHA also imposes an independent affirmative duty on employers and other covered entities to "take all reasonable steps necessary to prevent discrimination and harassment from occurring."** (Gov. Code, § 12940(i); *Flait v. North American Watch Corporation* (1992) 3 Cal.App.4th 467, 476, (employee, as harassed employee's supervisor, had statutory duty to take immediate action to end sexual harassment).) Employers are required to post the current Department of Fair Employment and Housing (DFEH) anti-discrimination poster, and the DFEH information sheet on sexual harassment, or its equivalent. (Gov. Code, § 12950.) The Ninth Circuit Court of Appeal has interpreted Title VII to require employers, when faced with charges of sexual harassment among their employees, to do more than merely investigate, even if the harassment has ended by the time they learn of it. (*Fuller v. City of Oakland, supra*, 47 F.3d 1522, 1528-1529.)

**If you file a harassment charge, the scope of permissible questions about prior sexual history with persons other than the alleged harasser is limited in federal and state court and administrative proceedings.** (Cf. *Jenson v. Eveleth Taconite Co.* (8th Cir. 1997) 130 F.3d 1287, 1294-1295); *Priest v. Rotary* (N.D. Cal. 1983) 98 F.R.D. 755; *Vinson v. Superior Court of Alameda County* (1987) 43 Cal.3d 833, 844; Evid. Code, §§ 783 and 1106; Code of Civ. Proc., § 2017(d) and Gov. Code, §§ 11507.6(g) and 11513(c) and (o).)

**A Court of Appeal has held that a claim for emotional distress arising out of sexual harassment is not preempted by the Workers' Compensation Act.** (*Accardi v. Superior Court, supra*, 17 Cal.App.4th 341, 353.)

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17. In *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 79-80), Division Two of the Second District Court of Appeal held that individual supervisory employees were not personally liable for making personnel decisions of a discriminatory nature, in contrast to the personal liability that could be imposed for sexual harassment. Division Five of the Second District Court of Appeal ruled that there was no personal liability for a non-harassing supervisor who took no action to prevent sexual harassment as either an aider and abettor of the harasser or as the agent of the employer. (*Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, 1322.) This was considered to be more in the nature of a personnel management decision, rather than harassment. (But see *Reno v. Baird* (1997) 57 Cal.App.4th 1211, review granted December 19, 1997, for a contrary decision by Division Two of the First District Court of Appeal.)

18. The United States Supreme Court has agreed to decide which standard should be used under Title VII to determine when employers can be held liable for sexual harassment by their supervisory employees that creates a hostile work environment. (*Faragher v. City of Boca Raton*, Case No. 97-282.)

**If you quit your job as a result of sexual harassment or sexual discrimination by your employer, you may be eligible for unemployment insurance benefits.**

However, you must meet all eligibility requirements under the Unemployment Insurance Code, as well as have taken reasonable steps to preserve your employment. (Unemp. Ins. Code, §§ 1256.2 and 1256.7.)

## **Other Common Law or Constitutional Causes of Action For Sexual Harassment**

**In *Rojo v. Kliger* (1990) 52 Cal.3d 65, the California Supreme Court determined that a complainant in a sexual harassment case was not precluded from pleading a cause of action for wrongful discharge in violation of public policy, even though she failed to file a timely DFEH complaint under the FEHA.**

## **Sexual Harassment By Professional and Vocational Licensees**

**Effective January 1, 1995, Civil Code § 51.9 extended the prohibition of sexual harassment beyond the employment relationship** and created a civil cause of action for sexual harassment in relationships between providers of professional or business services, such as physicians, attorneys, therapists, social workers, real estate agents and appraisers, accountants, trust officers, financial planners, collection services, building contractors, escrow loan officers, executors, trustees, administrators, bankers, landlords and teachers, and their clients. Other "substantially similar" relationships are also covered. The plaintiff must show that the defendant made sexual advances, solicitations, requests or demands for sexual compliance by the plaintiff that were unwelcome and persistent or severe, continuing after a request by the plaintiff to stop; plaintiff could not easily terminate the relationship without tangible hardship; and plaintiff has suffered or will suffer economic loss or disadvantage or personal injury as a result of defendant's conduct. This section is not enforced by the FEHC or DFEH, but plaintiffs can go directly to court.

## **Pregnancy**

**The law guarantees that women affected by childbirth or related medical conditions must be treated the same for all employment-related purposes, including the receipt of fringe benefits, as other persons with similar ability or inability to work.**

## **In General**

**You cannot be discriminated against because of a pregnancy-related condition as long as you work for an employer with more than five employees.** A working pregnant woman has the right to the same benefits and privileges of employment as a working nonpregnant person, as long as they are similar in their ability to work. It is unlawful for an employer to refuse to hire you, to fire you, to harass you, to refuse you a promotion, to reduce your pay, or to reduce your benefits or privileges of employment, solely because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. (42 U.S.C. § 2000e(k); Gov. Code, §§ 12926 (a), (j) and (o); 12940(a) and 12945(a).)

**A Court of Appeal has held that article I, section 8 of the California Constitution contains a fundamental public policy prohibiting employment discrimination based on pregnancy,** and that such a cause of action was not barred by the Workers' Compensation Act. (*Badih v. Myers* (1995) 36 Cal.App.4th 1289, 1296.)

**An employer may not limit disability benefits for pregnancy-related conditions to married employees.** (Gov. Code, § 12940(a); Cal. Code Regs., tit. 2, §§ 7291.1(b)(2) and 7291.2.)

**An employer absolutely may not require you to be sterilized as a condition of employment.** (Gov. Code, § 12945.5; Cal. Code Regs., tit. 2, § 7291.1(e)(5).)

## **Pregnancy and Leaves of Absence**

**State law requires employers of five or more employees (Gov. Code, § 12926(d)) to guarantee the jobs of employees who take a pregnancy disability leave,** as medically needed, for up to four months,<sup>19/</sup> unless the employee would not otherwise have been employed in the same position for business reasons unrelated to the leave or transfer, or unless preserving the job would substantially undermine the employer's ability to operate the business safely and efficiently. If the above conditions are met, the employee has a right to reinstatement to a comparable position, unless there is no comparable position available, or filling the comparable position with the employee would substantially undermine the employer's right to operate the business safely and efficiently. (Cal. Code Regs., tit. 2, § 7291.9.)

In *California Federal Savings and Loan Assn. v. Guerra*, (1987) 479 U.S. 272, the U.S. Supreme Court upheld the constitutionality of this law.

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19. See discussion, *infra*, of the leave for pregnancy disability that may also be obtained pursuant to the Family and Medical Leave Act of 1993, 29 U.S.C., § 2601 et seq., or FMLA.

**The employee shall be entitled to utilize any accrued vacation leave** during this period of time. (Gov. Code, § 12945(b)(2); Cal. Code Regs., tit. 2, § 7291.7 et seq.) If an employer allows employees with other disabilities to take more than a four-month leave, the same leave must be available to employees disabled by pregnancy. (42 U.S.C. § 2000e(k).)

**If employees with other forms of disabilities are granted paid sick leave, then an employer must also grant paid sick leave to pregnant women.** However, if the employer does not give paid leaves of absence to disabled workers, he/she is not required to grant a paid leave to pregnant workers. (42 U.S.C. § 2000e(k); Cal. Code Regs., tit. 2, § 7291.11(a).)<sup>20/</sup>

**You cannot be forced to take a leave of absence because you are pregnant.** You must be evaluated on the basis of your ability or inability to work. (29 C.F.R. § 1604.10(b); Cal. Code Regs., tit. 2, § 7291.2 .)

**An employer has the right to require you to give reasonable advance notice of your plans to take a pregnancy leave and of the duration of that leave.** If the employer requires a doctor's certificate to verify other temporary disabilities, the employer may also require a doctor's certificate in the case of pregnancy. (42 U.S.C. § 2000e(k); 29 C.F.R. § 1604.10(b); Gov. Code, § 12945(b)(2); Cal. Code Regs., tit. 2, §§ 7291.2 and 7291.10.)

## **Pregnancy and Employer-Provided Insurance**

**An employer covered by both Title VII and the FEHA must give equal treatment to all employees to the extent that health insurance protection is provided by the employer.** For example, if a health insurance plan covers the cost of a private room for other conditions, it must also provide the cost of a private room for pregnancy-related conditions. If the plan covers office visits to doctors for other conditions, it must cover prenatal and postnatal visits for pregnant women. (42 U.S.C. § 2000e(k); Gov. Code, § 12945(a); Cal. Code Regs., tit. 2, § 7291.5.)

**If an employer's medical insurance plan covers the medical expenses of husbands of female employees, it must also cover the expenses, including pregnancy, of wives of male employees.** (*Newport News Shipbuilding & Dry Dock v. EEOC* (1975))

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20. In a recent case, *Pacourek v. Inland Steel Co.* (N.D. Ill. 1996) 916 F.Supp. 797, a district court ruled that infertility is a physical impairment under the ADA, that reproduction is a major life activity, and that infertility substantially limits reproduction; therefore, the protections of the ADA are available to an employee receiving infertility treatment. The United States Supreme Court will decide whether reproduction is a major life activity in the case of *Abbott v. Bragdon*, Case No. 97-156.

## **Pregnancy and Hazardous Work Conditions**

An employer who wants to protect an employee's unborn children from hazardous employment<sup>21/</sup> may not exclude all women of childbearing age. However, the employer may determine if the hazards affect the reproductive systems of both men and women. If the conditions are hazardous to both men and women of childbearing age, the employer must transfer the employee, unless to do so would impose an undue hardship, or must eliminate or minimize the number of hazardous working conditions. (Cal. Code Regs., tit. 2, § 7291.1(d); *Johnson Controls, Inc. v. Fair Employment & Housing Com.* (1990) 218 Cal.App.3d 517.)

**The U.S. Supreme Court in *Internat'l Union, UAW v. Johnson Controls, Inc.* (1991) 499 U.S. 187, held that an employer's policy barring all women, except those whose infertility was medically documented, from jobs involving actual or potential lead exposure, was discriminatory, and that the employer did not establish that sex was a BFOQ.**

**The existence of a greater risk for employees of one sex than the other does not justify a BFOQ defense.** (Cal. Code Regs., tit. 2, § 7291.1(d)(3).)

**It may be unlawful for an employer to deny the request of a pregnant employee to be transferred to a less strenuous or hazardous position or to less strenuous or hazardous duties when the employer has a practice of transferring temporarily disabled employees to less hazardous positions for the duration of their disability.**

In the absence of such a policy, it may be unlawful for an employer to refuse to transfer a pregnant employee to a less hazardous position for the duration of the pregnancy, provided the request for transfer is based on the advice of a physician, and provided that the transfer can be reasonably accommodated by the employer and the refusal is not excused by business necessity or a job-related defense. However, if to facilitate such a transfer, an employer must create additional employment that would not otherwise have been created, discharge another employee, violate the terms of a collective bargaining agreement, transfer an employee with more seniority, or promote or transfer any employee who is not qualified to perform the new job, then the employer will not be required to facilitate such a transfer. (Gov. Code, § 12945(c)(1) and (2); Cal. Code Regs., tit. 2, § 7291.6.) An employer may require the employee to transfer temporarily to an available

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21. California Labor Code section 6311 forbids employers from terminating or laying off an employee who refuses to work in conditions that violate worker-safety laws and that create a real or apparent hazard to workers. Employee pay cannot be withheld while refusing to work under such conditions.

alternative position with an equivalent rate of pay and benefits, if the employer is qualified and it is medically advisable for the employer to take intermittent leave or leave on a reduced work schedule. (*Ibid.*)

**If you have been transferred to a less strenuous or hazardous position for the duration of your pregnancy, you must not be penalized for the transfer when you return to your original job.** This means that you must be allowed to return to your original job, or a similar one, with no loss of seniority or decrease in pay, unless you would not otherwise have been employed in the same position for business reasons unrelated to your leave or transfer, or preserving your job would substantially undermine the employer's ability to operate the business safely and efficiently. If the above conditions are met, you have a right to reinstatement to a comparable position unless there is no comparable position available, or placing you in a comparable position would substantially undermine your employer's right to operate the business safely and efficiently. (Cal. Code Regs., tit. 2, §§ 7291.6(d), and 7291.9.)

## **Family Leave**

### **CFRA**

**The California Family Rights Act or CFRA, (Gov. Code, § 12945.2), provides for mandatory family and medical leave for any of the following:** 1) leave for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of the child of the employee; 2) leave to care for a parent or spouse who has a serious health condition; and 3) leave because of an employee's own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth or related medical conditions.

**CFRA applies to employers that directly employ 50 or more full or part-time persons<sup>22/</sup> to perform services for a wage or salary and to the state and any political or civil subdivision of the state and cities.** (Gov. Code, § 12945.2(c)(2)); Cal. Code Regs., tit. 2, § 7297.0(d)(1).) To be eligible for leave, the employee must have 12

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22. The 50 employees do not all have to be employed within California, as long as the employer is engaged in business in California and the employee seeking the leave works in California. (Cal. Code Regs., tit. 2, § 7297.0(d).) The employee seeking the leave must be employed by an employer who maintains on the payroll, as of the date the employee gives notice of the need for a leave, at least 50 part-time or full-time employee within 75 miles, measured in surface miles, using surface transportation, of the worksite where the employer requesting the leave is employed. (Cal. Code Regs., tit. 2, § 7297.0(e)(3).)

months of service with the employer and at least 1250 compensable hours of work for the employer during the previous 12-month period. (Cal. Code Regs., tit. 2, § 7297.0(e).) (The latter requirement cuts out part-time workers who work less than 25-30 hours per week and may eliminate employees who were absent from work for any number of legitimate reasons.)

**CFRA allows an eligible employee up to a total of 12 work-weeks in a 12-month period for family care and medical leave.** If both parents work for the same employer, only 12 weeks total leave for birth, adoption or foster care placement of a child need be given. (Cal. Code Regs., tit. 2, § 7217.19(c).) Many employers, however, are deciding not to enforce this limitation to avoid the FEHA's prohibition against marital status discrimination.

**CFRA leave does not have to be taken in one continuous period of time.** If the leave is common to both CFRA and the Family and Medical Leave Act of 1993 or FMLA (29 U.S.C. §2601 et seq.), the 12-month period will run concurrently with the 12-month period under FMLA, unless it is leave taken under the FMLA for disability on account of pregnancy. An employer may choose any of the methods specified at 29 C.F.R. § 825.200(b) for determining the 12-month period, as long as it applies the chosen method consistently and uniformly to all employees. (Gov. Code, § 12945.2(5); Cal. Code Regs., tit. 2, § 7217.3.)

**An employee is required to give at least verbal notice sufficient to make the employer aware that the employee needs CFRA-qualifying leave,** and the anticipated timing and duration of the leave. Thirty days' notice of the leave should be given where practicable, and it is the employer's responsibility to inform the employee of any notice requirement, and of his/her right to take a CFRA leave. (Cal. Code Regs., tit. 2, § 7297.1.)<sup>23/</sup>

**As a condition of granting the leave for the serious health condition of the employee or the employee's child, parent, or spouse, the employer may require a medical certification,** that in most cases, should be provided within 15 calendar days of the employer's request. The employer shall respond to the leave request as soon as practicable, and in any event, no later than two calendar days after receiving the request.<sup>24/</sup>

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23. FMLA requires a more detailed notice to the employee of the employee's obligations; California employees are advised to follow these requirements, rather than the CFRA requirements, since when there is a conflict, the provision that provides the greater rights will prevail. (29 C.F.R. § 825.301; 29 U.S.C. §2651(b).)

24. Title 2 of the California Code of Regulations, § 7297.4(a), provides for a calendar day response time, but since FMLA provides for a shorter response time (29 C.F.R. § 825.208(b)(1) and

**The certification should provide**, where applicable, the date on which the serious health condition commenced (but need not identify the condition), the probable duration of the condition, the amount of time needed to care for the individual, the reason participation of the employee is required, or a statement that the employee is unable to perform the function of his/her position. (Gov. Code, § 12945.2(j); Cal. Code Regs., tit. 2, § 7297.0.) If the employer has reason to doubt the validity of the certification, a second and third medical opinion may be sought. As a condition of an employee's return from medical leave, the employer may require the employee to obtain a release to return to work from his/her health care provider if such release is uniformly required of other employees returning to work after illness, injury or disability. (Cal. Code Regs., tit. 2, § 7297.4(b).)

**An employee taking a leave may elect, or an employer may require the employee to substitute, accrued vacation leave, other accrued time off, any other paid or unpaid time off negotiated with the employer, or sick leave**, if the leave to be taken is because of the employee's serious health condition. (Gov. Code, § 12945.2(e); Cal. Code Regs., tit. 2, § 7297.5.) A serious health condition includes any illness, injury, impairment, and physical or mental condition (including on-the-job injuries) that incapacitates the employee for more than three consecutive calendar days and requires some treatment by a health care provider. It also includes chronic medical conditions (such as arthritis or asthma) that may flare up periodically and thus compel a need for intermittent time off, but not necessarily three consecutive days. Also covered are conditions that require regular multiple treatments, such as physical therapy or radiation. Thus, for instance, an employee may take four hours of protected CFRA time off every week to take his/her child to physical therapy if the child's doctor certifies that such treatment is medically necessary for the child's medical condition. (Cal. Code Regs., tit. 2, § 7297.0(o).) For a leave due to a planned medical treatment or supervision of a sick family member, etc., the employee is required to make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer. (Gov. Code, § 12945.2(i).)

**During the period that an employee takes CFRA leave, the employee shall maintain and pay for coverage under a group health plan** for the duration of the leave. The employee also may have rights to participate in other employee benefit plans. (Gov. Code, § 12945.2(f); Cal. Code Regs., tit. 2, § 7297.5(c).)

**Upon granting the CFRA leave, the employer shall guarantee to reinstate the employee to the same or a comparable position**, with no break in service for

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(c)), employers should comply with FMLA regulations, rather than the state regulations.



purposes of longevity or seniority, subject to certain defenses. One defense is if the employee would not otherwise have been employed at the time reinstatement is requested. The second is the "key employee" defense. (Cal. Code Regs., tit. 2, §§ 7297.2 and 7297.5.) (These defenses are extremely hard to prove and are not being asserted by most employers.) It shall be unlawful for the employer to refuse to hire, or to discharge, fire, suspend, expel, or discriminate against any individual exercising his/her right to a family care and medical leave or providing information with regard to such a leave. (Gov. Code, § 12945.2(1); Cal. Code Regs., tit. 2, § 7297.7.)

**A federal district court has ruled that an employee may state a claim for violation of a public policy under CFRA.** (*Ely v. Wal-Mart* (C.D.C. 1995) 875 F. Supp. 1422, 1425-1429.)

## **FMLA**

**FMLA is substantially similar to CFRA.** Where there is a conflict between the provisions of FMLA and state law on any issue, the provision that provides the greater family or medical leave rights to the employee will prevail. (29 U.S.C. § 2651(b).) FMLA and CFRA both cover the same employers (29 U.S.C. § 2611(4)) and have virtually the same employee eligibility requirements. (29 U.S.C. § 2611(2).)

**The major distinction between CFRA and FMLA lies in the area of pregnancy disability as a serious health condition.** Under the FMLA regulations, "any period of incapacity due to pregnancy, or for prenatal care" is explicitly covered as a "serious health condition," thus entitling an employee to 12 weeks of FMLA leave (29 C.F.R. § 825.114(a)(2)(ii).) Under CFRA, "leave taken for [an employee's own] disability on account of pregnancy, childbirth, or related medical conditions" is specifically excluded from the statutory definition of "family care and medical leave." (Gov. Code, § 12945.2(3)(c).) Thus, the maximum possible combined leave entitlement for both pregnancy disability leave under Government Code § 12945(l)(2)), and CFRA leave for reason of the birth of a child is four months and 12 work weeks. (Cal. Code Regs., tit. 2, § 7297.6.) (This assumes the woman receives the maximum of four months pregnancy disability and 12 work weeks of CFRA birth leave.) This contrasts with the FMLA entitlement of 12 work weeks for both pregnancy disability and birth/bonding with the newborn child.

**Both laws have the same rule for medical leave for the employee's own serious health condition,** allowing the employer to demand a second and, under certain circumstances, even a third medical opinion if the employer has reason to doubt the validity of the original certification. The one exception is medical leave taken for the employee's own pregnancy disability. The state's pregnancy regulations provide that if the certification offered by the employee has all of the requisite detail, the

employer "must accept it as sufficient." (Cal. Code Regs., tit. 2, § 7291.10(b).) Thus, in a FMLA/Pregnancy Disability Leave situation involving pregnancy, the employer may not require a second opinion.

**If the requested leave involves the serious health condition of a covered family member, the two laws differ.** CFRA requires the employer to accept the medical certification of the family member's health care provider if it is "sufficient" within the meaning of the statute. (Gov. Code, § 12945.2(j).) On the other hand, FMLA allows for the three-tiered medical certification process, even for family members. (29 U.S.C. § 2613.) Since state law is more generous (that is, less onerous) to the employee than federal law on this issue, California employers must be satisfied with the single certification for family member illnesses.

**A further difference is that CFRA does not require the employee or his/her doctor to disclose the underlying diagnosis of the serious health condition.** (Gov. Code, § 12945.2(j) and (k); Cal. Code Regs., tit. 2, §§ 7297.0(a)(i) and (2); 7297.4(b)(1) and (2); and 7217.11.) In contrast, FMLA allows the medical certification to contain "the appropriate medical facts within the knowledge of the health care provider regarding the [serious health] condition." (29 U.S.C. § 2613(b); 29 C.F.R. § 825.306-307.) Since state law is more protective of the employee's right to privacy, CFRA most likely would be the controlling authority on this issue.

**Another difference between the two statutes concerns the use of an employee's accrued vacation time.** When the employee simply asks to take his/her accrued vacation time without mentioning anything that would lead the employer to believe that the vacation was going to be used for a CFRA/FMLA qualifying event, the FMLA regulations allow the employer to "inquire further" to see if the request for paid time off is "potentially FMLA-qualifying." (29 C.F.R. § 825.208(a).) The CFRA regulations, however, take a different position and state that "[i]f an employee requests to utilize accrued vacation time or other paid accrued time off without reference to a CFRA-qualifying purpose, an employer may not ask whether the employee is taking the time off for a CFRA-qualifying purpose." (Cal. Code Regs., tit. 2, § 7297.5(b)(2)(A).) The result is that under state law, the employee using up his/her vacation time would still have 12 weeks of CFRA leave available, if needed.

**The two laws are also different regarding leave for the birth of a child or placement of a child in the employee's home** for adoption or foster care. Under FMLA, this birth/bonding leave must be taken all at once, unless otherwise agreed to by the employer. (29 U.S.C. § 2612(b)(1); 29 C.F.R. § 825.203(b).) In contrast, CFRA states that CFRA leave may be taken in more than one period, and creates a basic two-week minimum duration, with two shorter exceptions, for CFRA birth/bonding leaves. (Gov. Code, § 12945.2(p); Cal. Code Regs., tit. 2, § 7297.3(d).) Again, since state law is more flexible, it would probably be deemed more

generous to the employee and would prevail over FMLA. Both laws, however, require that any birth/foster care/adoption leave be concluded by the end of the 12-month period that begins on the date of the birth or placement of the child in the employee's home. (29 U.S.C. § 2612(a)(2); Cal. Code Regs., tit. 2, § 7297.3(d).)

**A last critical difference between the two laws lies in the different remedies they provide.** FMLA contains an enforcement scheme that allows for both civil and administrative enforcement, as well as liquidated damages that are capped at three times the actual out-of-pocket losses. (29 U.S.C. § 2617.) A violation of CFRA, however, is a violation of the FEHA--and the entire panoply of remedies, including administrative adjudication, is available. (Gov. Code, § 12965-12970.) These remedies include, in court actions, unlimited compensatory damages for emotional injury and punitive damages. Employers thus face significantly greater exposure to high damage awards under state law, rather than under federal law.

**The CFRA regulations incorporate by reference the FMLA regulations,** to the extent that they are not inconsistent with CFRA, for all leaves that are common to both laws. (Cal. Code Regs., tit. 2, § 7297.10.) This was done to assist all parties because the FMLA regulations are much more detailed on virtually every issue than are the CFRA regulations. Thus, if CFRA is either silent or less detailed on an issue, both employers and employees have somewhere to look for guidance and can be comfortable using the federal interpretation. In the end, however, it is important to look at both the state and federal laws and understand the overlap and interplay between them.

## **Abortion**

**You may not be discriminated against by your employer because you have had an abortion.**

**All fringe, benefits other than health insurance, that are provided for other medical conditions must also be provided for abortions.** For example, if your employer provided sick leave in case of other medical conditions, sick leave must also be provided in case of an abortion. (42 U.S.C. § 2000e(k).)

**Employers are required to provide coverage in their health insurance plans only for abortions in which carrying the fetus to term would endanger the mother or where medical complications have arisen from an abortion.** (42 U.S.C. § 2000e(k).)

## **Retirement**

**An employer may not discriminate with respect to retirement benefits on the basis**

**of sex.** (42 U.S.C. 2000e-2(a); *Arizona Governing Committee v. Norris* (1982) 463 U.S. 1073; Gov. Code, § 12940(a).)

**An employer may not have different optional retirement ages for men and women.** (Gov. Code, § 12040(a); Cal. Code Regs., tit. 2, § 7291.1(4).)

## **Retaliation**

**An employer, labor organization or employment agency may not retaliate against you because you have opposed its discriminatory practices,** or because you have assisted in bringing or have brought legal action against it, or because you have made a report pursuant to section 11161.8 of the Penal Code, which prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities. If retaliatory action has been taken against you, the law gives you the right to recover damages. (42 U.S.C. § 2000e-3(a);<sup>25/</sup> Gov. Code, § 12940(e) and (f); Cal. Code Regs., tit. 2, § 7287.8.)

**The California Supreme Court upheld a \$1.3 million jury verdict that supported the claim of a tortious discharge against public policy** of a plaintiff forced to resign for testifying truthfully concerning a co-worker's sexual harassment discrimination charge that had been filed with the DFEH. It also found that the cause of action was not preempted by the exclusive remedy provisions of the Worker's Compensation Act. (*Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083.)

## **Workers' Compensation**

**Workers' compensation provides insurance coverage for all workers who are injured on the job in the course of employment.** (Ins. Code, § 11630 et seq.) Injury to a fetus due to the mother's employment may be covered by workers' compensation. (*Bell v. Macy's California* (1989) 212 Cal.App.3d 1442.)<sup>26/</sup>

## **Paid Domestic Workers**

**Regular domestic workers who are not related to their employers have the same rights as any employees under the Fair Labor Standards Act.** Employers are

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25. This section has been interpreted to apply to former employees as well. (*Robinson v. Shell Oil Co.* (1997), \_\_ U.S.\_\_, 117 S.Ct. 843, 849.)

26. The California Supreme Court has held that the California Worker's Compensation Act does not bar a child from bringing a tort claim against her mother's employer based on injuries the child allegedly sustained in utero while the mother was working. (*Snyder v. Michael's Stores Inc.* (1997) 16 Cal.4th 991.)

required to deduct disability insurance from the paycheck of all employees who are paid more than a certain amount in a quarter. Employers are required to pay Unemployment Insurance and Employment Training taxes for all employees who are paid more than a certain amount in a quarter. For information on state and federal tax law pertaining to domestic workers and their employers, contact:

**Employment Development Department**

800 Capitol Mall (958)4-6497)

P. O. Box 826880

Sacramento, CA 94280-0001

(916) 653-0707

or the Employment Tax District office nearest you

**Internal Revenue Service**

(Check 1-800 number in the white pages for governmental agencies in your phone directory.)

## **LEGAL REMEDIES**

**If you believe that an employer has discriminated against you in any condition of employment because of your sex, or denied you equal pay, contact one of the government agencies listed at the end of this section** for advice and legal assistance. They may be able to help you get reinstated or obtain money to compensate you for lost wages, emotional distress, etc.

**The FEHC, if it finds, after issuance of an accusation by the DFEH and the holding of an administrative hearing, that an employer has engaged in unlawful sex discrimination or sexual harassment** of an employee, can order the hiring or reinstatement of an employee with or without back pay, the admission or restoration to membership in any labor organization, or the payment of actual damages for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other nonpecuniary losses, in combination with the amounts imposed as administrative fines, not to exceed \$50,000 per aggrieved person per employer. (Gov. Code, § 12970(a)(1-3).) Administrative fines, that go to the General Fund, can be awarded against all employers except public entities, if the employers are guilty of oppression, fraud or malice, as evidenced by such factors as willful, intentional, or purposeful conduct; refusal to prevent or eliminate discrimination; conscious disregard for the rights of employees; commission of unlawful conduct; intimidation or harassment; conduct without just cause or excuse; or multiple violations of the FEHA. Punitive damages are not authorized. (Gov. Code, § 12970(c) and (d).) The FEHC can now order an additional award of up to a maximum of \$150,000 for actual damages and a maximum penalty of \$25,000

to the aggrieved person if the harassment was accompanied by violence or intimidation in violation of Civil Code section 51.7. (Gov. Code, § 12970(a)(4) and (e).)

**An employer can opt to transfer the action from an administrative forum to civil court** if the accusation issued by the DFEH prays for damages for emotional injuries or for administrative fines or both, if it serves written notice. In such a case, the DFEH represents the state (the complainant is the real party in interest) in the court action. Complainants may also intervene and be represented by their own counsel in the action. (Gov. Code, § 12965.)

**You may also want to have a private attorney file** a civil lawsuit alleging violations of the FEHA. In such an action, you can obtain the same remedies as are available from the FEHC (except that there is no cap on the amount of compensatory damages), along with unlimited punitive damages to punish the employer in certain outrageous cases. (*Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211.) A court can also award prejudgment interest on sexual harassment awards. (*Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 998-1006.)

**Under Title VII, if the Equal Employment Opportunity Commission ("EEOC"), the enforcement agency for Title VII, wishes to prosecute a case, it must file an action in federal court.** (42 U.S.C. § 2000e-5(g).) The complainant can also opt instead for court action with a private attorney.

**Title VII authorizes a court to order such relief** as reinstatement or hiring, with or without back pay, cease and desist orders, posting of legal rights and of the fact that discrimination occurred and other equitable remedies. Federal law limits Title VII damages pursuant to the Civil Rights Act of 1991; these limitations range from \$50,000 to \$300,000 of combined compensatory and punitive damages per complaining party, based solely on the size of the employer. (42 U.S.C. § 1981(a).) Attorneys' fees and costs are also available. For information on how to get in touch with a private attorney, see the "General Legal Assistance" section in Chapter Nine, the Directory of Services.

## **Administrative Procedure and Right-to-Sue**

**When the FEHA and Title VII have concurrent jurisdiction over a case, complainants may file a complaint with either the DFEH or the EEOC.** Pursuant to a work-sharing agreement between the two agencies, complaints filed with one agency will be cross-filed with the other agency, but the complainant will receive an investigation only from the agency with which he/she actually filed.

**Under the FEHA, a complainant has one year from the date of the alleged discrimination/harassment to file a complaint** with the DFEH, except that this period may be extended for up to 90 days if the complainant first obtained facts of the alleged unlawful practice after the expiration of one year from the date of their occurrence. (Gov. Code, § 12960.) This is longer than the 300-day time limit for filing complaints with the EEOC under Title VII. (42 U.S.C. § 2000e-5(e). At least some of the discriminatory or harassing acts must have occurred within the year prior to the complaint being filed. Evidence of conduct that occurred more than one year before the complaint was filed is admissible, however, to establish the existence of a pattern of harassment. ( *Green v. Los Angeles Superintendent of Schools* (9th Cir. 1989) 883 F.2d. 1476, 1480; *Fisher v. San Pedro Peninsula Hospital*, *supra*, 214 Cal.App.3d 590, 613.)

**After the complaint is filed, the DFEH has one year in which to decide whether to issue a formal accusation** in a case, or two years if treated by the director as a group or class complaint for purposes of investigation, conciliation and accusation. (Gov. Code, § 12965(a).) The EEOC has no comparable time deadline under Title VII. In essence, then, the DFEH has one year in which to investigate the complaint.

**In practice, both the EEOC and the DFEH allow a complainant who wishes to pursue court action to obtain a right-to-sue letter any time after the complaint is filed.** If none is requested, the DFEH will issue a right-to-sue letter at the close of its investigation or at the one-year mark, whichever is sooner. (Gov. Code, § 12965(b).) The EEOC will issue a right-to-sue letter at the conclusion of its administrative proceedings. (42 U.S.C. § 2000e-5(f)(1).)

**Under the FEHA, a plaintiff has one year from the date of issuance of the right-to-sue letter in which to file a civil action** in superior, municipal, or justice court. (Gov. Code, § 12965(b).) The Ninth Circuit has held, however, that this time limit is tolled during the EEOC's investigation of the complaint. (*EEOC v. Farmer Brothers Co.* (9th Cir. 1994) 31 F.3d 891, 902-903). Under Title VII, a plaintiff has only 90 days from the receipt of the right-to-sue letter in which to file a civil action in federal court. (42 U.S.C. § 2000e-5(f)(1). The Ninth Circuit has held that the 90-day limit begins running on the date the right-to-sue letter is delivered to the most recent address provided the EEOC. (*Nelmida v. Shelly Eurocars, Inc.* (9th Cir. 1997) 112 F.3d 380, 383-384.)

**Even if a FEHA claim is filed in a timely manner, the statute of limitations may pass for such claims as tortious wrongful discharge in violation of public policy, assault and battery, and intentional infliction of emotional distress--all of which have a one-year statute of limitations.** (Code Civ. Proc., § 340.)

**The California Supreme Court has held that a plaintiff bringing a nonstatutory**

**claim for wrongful termination in violation of public policy, as stated in the FEHA, does not need to exhaust FEHA remedies.** (*Rojo v. Kliger, supra*, 52 Cal.3d 65, 88.)

Governmental agencies to contact:

**California Department of Fair Employment and Housing.** Offices in Bakersfield, Fresno, Los Angeles, Oakland, Sacramento, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, and Ventura. The department's toll-free telephone number is (800) 884-1684.

**California Department of Industrial Relations, Division of Labor Law Enforcement** (for equal pay, sexual orientation discrimination and Family School Partnership Act claims). District offices are located in Bakersfield, Eureka, Fresno, Long Beach, Los Angeles, Marysville, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton and Van Nuys.

**Federal Equal Employment Opportunity Commission.** Offices: check the white government agency pages of your telephone book for listings.

**U. S. Department of Labor, Office of Federal Contract Compliance/Employment Standards Administration,** for employment discrimination by federal contractors. Check the white government agency pages of your telephone directory for listings.



# CHAPTER TWO

## ECONOMIC INDEPENDENCE

California and federal laws generally provide for equal treatment of men and women in the economic sphere. Chapter One dealt exclusively with employment issues; this chapter discusses women's rights with respect to a wider range of economic issues. Specific topics dealt with in this chapter include credit, housing loans, business establishments, contracts, insurance and public assistance programs.

### CREDIT

**Any business, such as a bank or gasoline company, that extends credit for goods or services is a "creditor."** A combination of California and federal laws makes it unlawful for a creditor to refuse to extend credit to a person because of his or her sex, marital status, race, color, national origin, religion, age or receipt of public assistance (with limited exceptions), or the exercise of certain legal rights.

**According to the law, a woman, married or single, is entitled to have credit accounts kept in her own name** so that she has a separate credit history, and can establish a good credit rating in her own name. When credit is denied to any person, that person has a right to a written statement of the reasons for the denial from the creditor. That person also has a right to a copy of his/her own credit history report from the "credit reporting bureau" that was relied upon by the creditor when refusing to extend credit. (Civ. Code, §§ 1747.80, 1785.10 et seq. and 1812.30 et seq.; 15 U.S.C. § 1681 et seq.; 12 C.F.R. § 202.5 et seq.)

**A person or class of persons may file legal action against creditors who discriminate illegally.** If discrimination by a creditor is proved in court, the court may award actual damages, punitive damages and attorneys' fees against the creditor. (Civ. Code, §§ 1812.31 and 1812.34; 15 U.S.C. § 1691e.)

## **Discrimination in Granting Credit is Generally Illegal**

**However, creditors are allowed to determine your creditworthiness on the basis of your income, expenses, debts and reliability.** (Civ. Code, § 1812.30; 15 U.S.C. § 1681b.)

**If you are an unmarried woman, you must be treated as an unmarried man would be treated when you apply for credit.** If you have earnings and assets that meet the creditor's requirements, you must be given the same credit at that business establishment as a man in your position would be given. Federal guidelines allow a creditor to inquire about marital status if you live in a community property state like California. (Civ. Code, § 1812.30; 12 C.F.R. § 202.5.)

**If you are a married woman, you must be treated as a man (married or single) would be treated when you apply for credit.** You may have more earnings and other assets under your management and control than a single working woman because of your husband's job and your community property. However, a credit agency must grant you credit in your own name, just as it would grant to a man in your position. (Civ. Code, § 1812.30 et seq.; 12 C.F.R. §§ 202.5 and 202.6.)

## **Billing Errors**

**Retailers and card issuers must correct billing errors made by them within 60 days** of the date on which an inquiry about a billing error was mailed. If they willfully refuse to do so, the cardholder may be able to collect three times his/her actual damages, along with reasonable attorneys' fees and costs. (Civ. Code, § 1747.60.)

## **Credit History**

**To get credit, you must show the creditor that you are "creditworthy."** Being creditworthy means that you have a separate credit history identifying you as a person who has managed your earnings and assets, and has borrowed and repaid your debts on time. One way to start a credit history is to open a checking or savings account in your own name. You may then apply to your bank for a bank credit card in your own name. If you charge purchases on your bank card and repay your bills on time, you will have a basis to prove your creditworthiness. As your credit history continues, you may be able to increase your credit limits and to open additional credit accounts.

**You may create a credit history for yourself by establishing accounts in your name.**

Your own legal name is your personal first name, and the last name (maiden name or married name) that you prefer to use. However, if you are married and you keep your bank account and credit cards in the name of "Mrs. Bill Jones," you have not created your own credit identity, but a duplicate of your husband's identity, since "Mrs. Bill Jones" is merely a social title.

**Joint accounts usually help establish your own credit history.** All information regarding joint accounts opened after January 1977 is required by law to be filed separately under the names of each account holder. For any joint charge account of a married couple opened **before** 1977, you have the right to request that the creditor (store, business, etc.) file information about the joint account in each name separately. You should request that the creditor report the credit history on the joint account in both names to the credit reporting bureau. (Civ. Code, § 1812.30(e) and (f); 12 C.F.R. § 202.10.)

## **Credit Reporting Bureau**

Civil Code section 1785.14 prohibits a credit reporting agency from furnishing a report to any person unless the agency has reasonable grounds to believe that the report will be used for certain designated purposes. (See Civ. Code § 1785.11.)

**You can verify your separate credit history by getting a copy of your credit history** report from a credit reporting bureau. Sometimes called a "credit bureau" or "credit reporting agency," this is a clearinghouse that provides subscriber members (banks, stores, businesses) with information about the financial transactions of their customers. The information available from the credit reporting bureau comes from the same subscriber-members who report to the bureau delinquent debts, civil judgments, bankruptcies and collections against their own customers. The bureau records and permanently maintains certain information, usually on computer tapes. The bureau usually does not do any independent investigation of the information reported to it by subscriber-members. (Civ. Code, § 1785.1 et seq.) To find out if you have any credit history and to see a copy of your own credit history reports, ask your bank or other creditor the name and address of the credit reporting bureau that they use.

**You have the right to get a copy of your own credit history from the credit reporting bureau at any time, for a fee not to exceed \$8.00.** If an adverse action has been taken against you, you can usually get a copy of your credit history report without charge, if you request it within 60 days after you receive notice that you have been denied credit or given a negative credit rating. You can also obtain the names of the recipients of the credit reports within a certain time period to determine who has reviewed your credit history for employment or other purposes.

(Civ. Code, §§ 1785.10 and 1785.17.)

You can find out about your credit history report by pursuing one of these options:

- ! Going to the credit reporting bureau in person and presenting identification. The agency must then give you a copy of your file. If the agency uses codes, you must be given an explanation of the codes used.
- ! Writing a letter to the bureau requesting a decoded version of your file. You must present proper identification in your letter and give a specific address to which your file may be mailed. Proper identification means information generally deemed sufficient to identify a person.
- ! Writing a letter requesting that the credit reporting bureau call you and give you the information in your file. Your letter must give your identification and your telephone number. (Civ. Code, §§ 1785.10 and 1785.15.)

If adverse action was taken against you based on consumer credit report information, and you request a copy of the information in your file within 60 days of notification of the adverse action, you will not be charged a fee. (Civ. Code, § 1785.17(2)(b).)

**The following information generally must NOT be included in a consumer credit report.**

- ! Bankruptcies that were declared by the court 10 or more years before the date of the credit report.
- ! Suits and judgments that were declared by the court seven or more years before the date of the credit report, or the expiration of the governing statute of limitations, whichever is the longer period.
- ! Unlawful detainer actions unless the lessor was the prevailing party.
- ! Tax liens that were paid seven or more years before the date of the credit report.
- ! Accounts that were placed for collection or charged to profit and loss seven or more years before the date of the credit report.<sup>27/</sup>
- ! Records of arrest, indictment, information, misdemeanor complaint or the conviction of a crime in which the date of disposition, release or parole precede the credit report by seven or more years. A conviction no longer must be reported if a full pardon was granted for it, nor must

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27. The seven years commences to run upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency that preceded the collection or other activity.

an arrest, indictment, information or misdemeanor complaint be reported if a conviction did not result from it.

- ! Any other information that will hurt your chances of getting credit, if the event occurred seven years or more before the date of the credit report. (Civ. Code, § 1785.13(a).)

**You may have legal remedies if you were illegally denied credit or suffered damages as the result of inaccurate or unlawful information passed on by a credit reporting agency.** If, after reviewing your credit file, you believe you were denied credit merely because of your sex or marital status, or the other grounds described in this chapter, and you have reason to believe that a man with the same assets and credit history as you would receive credit, you may wish to get legal assistance. There are several government agencies you can contact about certain types of credit discrimination. The names and addresses of these agencies follow.

**You may also wish to contact a private attorney** about the possibility of recovering actual damages, punitive damages up to \$10,000 as an individual, and attorney's fees as provided under the various laws. (Civ. Code, §§ 1785.31 and 1812.31; 15 U.S.C. § 1691e.)

**If the information in your own credit history report is out of date, incorrect or in dispute, you should write down all necessary corrections and return the corrected report to the bureau.** The bureau is required to check the new information, and if correct, to change your credit history report. You can request that the corrected information or notice be sent to any creditor who received a negative report within the last six months, and to prospective employers who received a negative report during the prior two years. (Civ. Code, § 1785.16 (h).)

**If the credit reporting bureau decides that it disagrees with you, it must notify you within five days of its decision that it believes your dispute is frivolous or irrelevant and state the reasons why.** If this happens, you can file your own statement of not more than 100 words presenting your side of the story, and this statement must be included in your credit history report. (Civ. Code, § 1785.16(b) and (f).)

If the agency reinserts disputed information in your file, it must notify you of the reinsertion and of your right to a reinvestigation of the accuracy of the reinserted information. (Civ. Code, § 1785.16.)

**Civil Code section 1785.16 was recently amended to require the credit agency to promptly and permanently block** the reporting of any information if the consumer submits a valid police report showing that another person has fraudulently used his credit information.

**The federal Fair Credit Reporting Act (FCRA)**, 15 U.S.C. section 1681 et seq., **has recently been amended** to protect consumer privacy and ensure the accuracy, relevancy and proper utilization of consumer reports. FCRA requires employers to give the consumer a clear and conspicuous written notice that states that the employer may obtain a consumer report. The consumer must authorize the obtaining of the report. The employer must certify to the consumer reporting agency that it will not make improper use of the information. Before taking adverse action based upon a consumer report, the employer must provide the consumer with a pre-adverse action disclosure and an adverse action notice.

## **Credit Applications**

**When you apply for credit, such as a bank-issued credit card, you will probably be asked to fill out a written credit application.** It is illegal for a creditor to make any discriminatory statement discouraging you from applying for credit. (12 C.F.R. § 202.5(a).)

**It is illegal for a creditor to issue you a credit card unless you have specifically requested one, or unless it is a renewal of or a substitution for an accepted credit card.** (Civ. Code, § 1747.05.)

**There are a number of questions that credit applications usually ask.** When filling out an application for credit, you will probably be asked about your employment, monthly earnings, savings and checking accounts, other credit accounts, dependents, whether you own or rent your house or apartment and how long you have resided there, and your telephone numbers at home and work. Such questions are lawful. Generally, creditors are looking for information to establish whether you have enough income and assets to be able to repay the loan, and whether you appear to have the "stability" in terms of job, home and residence in the community to indicate that you are a good credit risk. (12 C.F.R. §§ 202.5 and 202.6.)

**Creditors can ask you limited questions about your marital status.** They can ask whether you are "married," "unmarried" or "separated." (They cannot ask whether you are divorced or widowed.) This information can be used only to evaluate your creditworthiness, not to discriminate. The application can ask you to designate a title, such as Ms., Miss, Mr. or Mrs., but you are **not required** to give this information. A creditor is legally permitted to ask you about your immigration status when you apply for credit. (12 C.F.R. §§ 202.5 and 202.6.)

**There are a limited number of questions a creditor can ask you about your children.** A creditor can ask you how many children you have now and who are

your dependents. But this information can be used only to determine your financial situation, and not for discriminatory reasons. For example, a creditor cannot discriminate against you because you are a single parent. (12 C.F.R. § 202.5.)

**There are a number of questions that are illegal for you to be asked when filling out a credit application.** These include questions about your birth control practices, how many children you plan to have or adopt, whether you are able to have children, your race, color, religion, national origin and sex. A creditor cannot take your age into account, (as long as you have the capacity to enter into a binding contract), except that age can be used as a predictive variable in a credit scoring system, as long as it is not given a negative value; it can be used to favor elderly applicants; and it, along with evidence of receipt of public assistance, can be used only for determining a pertinent element of creditworthiness. (12 C.F.R. § 202.5 and 202.6.)

**If you are married, you can apply for credit in your own name.** All credit applications must tell you that you have a right to a separate account regardless of the fact that you are married. Usually, your signature alone will be required on the credit application if you apply for separate credit. (Civ. Code, § 1812.30(j); 12 C.F.R. § 202.7(d).)

**If you are married, you may use your maiden name when applying for credit.** You have a right to use either your husband's name or your maiden (birth) name on your credit card. You cannot be discriminated against because you choose to use your maiden name. (Civ. Code, § 1747.81; 12 C.F.R. § 202.7(b).)

**If you are married, you can be asked some questions about your spouse when applying for joint credit.** Because California is a community property state, you can be asked to give information about your spouse when applying for joint credit, or when alimony or support payments from your spouse or former spouse will be relied upon as a source for repayment of your debts. (See chapter on Domestic Relations for more information about community property.)

**If asked, usually you must disclose debts against your community property** when you apply for credit. A creditor can ask you to provide information about any debts that you and your spouse have against your community property. This means that you may be asked about debts incurred by your spouse even if you are seeking credit only in your name. This is because each spouse is responsible for the community debts of the marriage. A creditor may **not** use this information to discriminate against you just because you are a woman. This means that an application for credit cannot ask you questions that it does not ask a man in your situation. (12 C.F.R. § 202.5.)

**Generally you cannot be forced to reapply for credit if you change your marital status or your name.** However, you may be required to reapply for credit if you request unsecured credit and rely on property owned with another person. (The other person's signature may be required on the new application.) The only time a creditor may either cancel your credit card or reduce your limit after a change in your marital status is when you are either unable or unwilling to pay your debts. This means that your credit cards may not be canceled simply because you were divorced, widowed or because you changed your name. (12 C.F.R. § 202.7(c).)

**You do not have to give any information about alimony, child support or separate maintenance payments unless you want the amounts from those sources to be included as part of your income.** This means that if you do not want the creditor to know that you are divorced and are receiving alimony payments, you should not include these payments as part of your income on the credit application. On the other hand, if you have no other sources of income, you will want your alimony payments to be included in your income, and you may have to disclose the source of those payments. (12 C.F.R. §§ 202.5(d)(2) and 202.6(b)(5).)

**It is unlawful for a creditor to discriminate against you because you are living with a man to whom you are not married.** (12 C.F.R. § 202.5(d)(1).)

## **If Your Credit Application is Denied**

**If you are denied credit, you have the right to be informed of the exact reasons for the denial.** Once you have filed a written application for credit, you have a right to a written explanation from the creditor if you are turned down.

**After you have applied for credit, you must be informed whether you have been given or denied credit within 30 days or later as specified in federal laws and regulations after the creditor received your completed application,** took adverse action on an incomplete application, or took adverse action on an existing account.<sup>28/</sup> The creditor must either:

- ! give you a statement of specific reasons for denying you credit; or
- ! give you the name, address and telephone number of the person who can tell you the reasons you were denied credit. The reasons for denial of the credit must be sent to you within 30 days after receipt of your request. Your request must be sent within 60 days of notification of the denial. (Civ. Code, § 1787.2; 15 U.S.C. § 1691(d)(2)(B); 12 C.F.R.

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28. Notification should occur within 90 days after notification of a counter offer if the applicant does not expressly accept or use the credit offered. (12 C.F.R. § 202.9(a)(iv).)



§ 202.9.)

**A creditor who fails to supply a credit applicant with the reason for the denial of credit is liable for any actual damages sustained by the applicant as a result of the failure, and punitive damages of up to \$10,000.00. (Civ. Code, § 1787.3.)**

**If you have been denied credit, you may want to look at your credit bureau report. Contact the credit reporting bureau in your city.**

## **Cancellation of Credit Card**

**Unless requested by the cardholder, no card issuer can cancel a credit card without having first given the cardholder 30 days' written notice of its intention to do so unless:**

- ! Within the last 90 days the cardholder has been in default of payment or otherwise in violation of the provision of his/her agreement with the card issuer; or
- ! The card issuer has evidence or a reasonable belief that the cardholder is unwilling or unable to repay his/her obligations or that an unauthorized use of the card may be made. (Civ. Code, § 1747.85.)

The card issuer can place the cardholder's account on inactive status if the card has not been used for in excess of 18 months, and it can require updated information upon subsequent reuse of the card.

## **Credit Card Theft**

**A cardholder may be liable for the unauthorized use of a credit card only if ALL of the following conditions are met:**

- ! The card is an accepted credit card.
- ! The liability is not more than \$50.
- ! The card issuer gives adequate notice to the cardholder of the potential liability.
- ! The card issuer has provided the cardholder with a description of the means by which the card issuer may be notified of loss or theft of the card.
- ! The unauthorized use occurs before the card issuer has been notified that an unauthorized use of the credit card has occurred or may occur as a result of the loss, theft or otherwise.

- ! The card issuer has provided a method whereby the user of the card can be identified as the person authorized to use it.

Always read the information concerning lost or stolen credit cards that is mailed to you when you receive your cards. (Civ. Code, § 1747.10.)

**The names and addresses of the offices where complaints can be filed and questions asked are as follows:**

## **Retail stores, finance companies and nonbank credit card issuers:**

Federal Trade Commission  
901 Market Street, Suite 570  
San Francisco, CA 94103  
(415) 356-5270

Federal Trade Commission  
11000 Wilshire Blvd., Suite 13209  
Los Angeles, CA 90024  
(310) 235-4000

## **National banks:**

U.S. Treasury Department  
Comptroller of Currency  
250 E. Street South West  
Washington, D.C. 20219  
(202) 874-5000

## **Air carriers:**

Assistant General Counsel  
Aviation Enforcement and Proceedings  
Department of Transportation  
C-70 Room 4116  
400 Seventh Street, S.W.  
Washington, D.C. 20590-0001  
(202) 366-4000

**Small business investment companies:**

U.S. Small Business Administration  
1110 Vermont Avenue N.W., 9th Floor  
P. O. Box 34500  
Washington, D.C. 20043-4500  
(202) 606-4000

**Brokers and dealers:**

Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549  
(202) 942-8088

**Federal land banks, federal land bank associations, federal intermediate credit banks and production credit associations:**

Farm Credit Administration  
1501 Farm Credit Drive  
McLean, VA 22102-5090  
(703) 883-4000

**State member banks:**

Federal Reserve Bank  
101 Market Street  
San Francisco, CA 94105  
(415) 974-2000

Federal Reserve Bank  
950 S. Grand Avenue  
Los Angeles, CA 90015  
(213) 683-2300

**Nonmember insured banks:**

Regional Director  
Federal Deposit Insurance Corporation  
25 Ecker Street, Suite 2300  
San Francisco, CA 94105  
(415) 546-0160

**Savings institutions insured by the FSLC and members of the FHLB system (except for savings banks insured by the FDIC):**

Supervisory Agent  
Federal Home Loan Bank of San Francisco  
600 C Street, 3rd Floor  
San Francisco, CA 94108  
(415) 616-1000

If you are aware of credit practices by a store or agency that you believe violate the laws described in this book, you may also send your written complaint to:

Office of the Attorney General  
Public Inquiry Unit  
P. O. Box 944255  
Sacramento, CA 94244-2550

## **BUSINESS ESTABLISHMENTS**

**Under California law, women and men are entitled to equal treatment by business establishments.** If you are illegally denied entrance or services by any business establishment, you can file a legal action against the business for damages and attorneys' fees. (Unruh Civil Rights Act, Civ. Code, §§ 51, et seq.)

### **Definition**

**A business establishment is a place generally open to the public.** Examples of business establishments include restaurants, bars, stores, movie theaters, hotels, motels, shopping centers, housing accommodations, apartment buildings, real estate brokers, and doctors' offices. (61 Ops.Cal.Atty.Gen. 320 (1978).)

**Not all clubs meet the legal definition of "business establishments."** Some clubs that are supported by private membership and are open only to members and their families may not be "business establishments" and may not be covered by this law.

**The U.S. Supreme Court upheld a New York City ordinance that outlaws sex discrimination in membership by most large private clubs.** (*New York State Club Assn. v. New York City* (1988) 487 U.S. 1.) However, even a "private club" can become a business establishment and be subject to laws against discrimination to the extent that it permits public and business functions to occur on its premises. The California Supreme Court recently held that the Unruh Civil Rights Act may be violated by private golf clubs which exclude women from proprietary membership.

(*Warfield v. Peninsula Golf & Country Club* (1995) 10 Cal.4th 594.) The Court in a majority opinion distinguished the Boy Scouts from other entities found subject to the Act, ruling that it was not a business establishment whose membership decisions were subject to the Unruh Act. (*Curran v. Mt. Diablo Council of Boy Scouts of America* (1998) \_\_\_\_ Cal.4th \_\_\_\_, 98 Daily Journal D.A.R. 2802 and *Randall v. Orange County Council of Boy Scouts of America*, (1998) \_\_\_\_ Cal.4th \_\_\_\_, 98 Daily Journal D.A.R. 2798.) Thus, it could refuse to admit as members homosexuals, atheists and agnostics. (This ruling will probably result in another case accepted for review, *Yeaw v. Boy Scouts of America*, Case No. S062749, review granted, August 20, 1997, being remanded for a decision consistent with it. That case involved whether it violated the Unruh Act for the Boy Scouts to refuse membership to girls.)

**A number of California cities, including San Francisco, Sacramento and Los Angeles, have local ordinances that outlaw discriminatory membership practices for most large private clubs.** None of the local ordinances is exactly the same, and not all private clubs are covered. You may want to contact your city attorney to find out whether your city has such a local ordinance, and whether it is being challenged in court.

## **Your Rights in a Business Establishment**

**It is illegal for a business establishment in California to treat women less favorably than men entering and using the establishment.** This means that you, as a woman, are allowed to enter any office, restaurant, bar, or other business establishment on the same basis as any other person is allowed to enter. You must be given the same privileges, accommodations, goods, and services as any other person coming into the place. For example, it is illegal for a restaurant to refuse to serve a woman seated alone if the restaurant will serve a man seated alone. It is illegal for a restaurant to refuse to serve you because of your sexual orientation. (*Rolon v. Kulwitsky* (1984) 153 Cal.App.3d 289.)<sup>29/</sup>

**Businesses cannot discriminate against you on the basis of your marital status, nor can they arbitrarily exclude children from their premises.** (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d. 721.)

**Sex-based promotional discounts, such as ladies' day at the car wash or ladies'**

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29. The California Supreme Court recently held that the Unruh Civil Rights Act is limited in its application to discrimination based on personal characteristics, the categories listed in Civil Code section 51, and the categories previously recognized by case law. (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142 (holding that economic discrimination in the rental of an apartment is not covered by the Act).)

**night at clubs, also constitute illegal sex-based discrimination.** Business establishments must provide equal advantages and services to all customers, "no matter what their sex." (*Koire v. Metro Car Wash* (1985) 40 Cal.3d 24.) A recent amendment to the Civil Code prohibits businesses from charging more for a service because of gender, unless the amount of time, difficulty, or costs of providing the service is more because of the gender of the customer. (Civ. Code, § 51.6.)<sup>30/</sup>

**It is illegal for nearly any business that has a state license for some activity to refuse to provide that licensed activity to you because you are a woman.** For example, it is illegal for most establishments with a state liquor license to refuse to provide that licensed activity to you because you are a woman. The business can lose its license for such a refusal. (Bus. & Prof. Code, § 125.6; *Easebe Enterprises, Inc. v. Alcoholic Bev. Etc. Appeals Bd.* (1983) 141 Cal.App.3d 981.)

**Rental housing is considered a business establishment. It is thus illegal for an apartment owner to refuse to rent an apartment to a woman merely because she is a woman.** (See the Housing Chapter for additional information about your housing rights.)

## Legal Remedies

If you believe you have been denied equal rights by a business establishment because of your gender, there are a number of possible remedies you may seek.

**You may want to hire a private attorney.** A private attorney can file an action in court to recover up to three times your actual damages, but not less than \$1,000 damages for each act of discrimination, and your attorney's fees. (Civ. Code, § 52(a).)

**Also, you may wish to file a complaint with the California Department of Fair Employment and Housing (DFEH).** DFEH may pursue your complaint through an administrative hearing. (Gov. Code, §§ 12930(f)(2), 12930(h), 12948, 12960, 12965 and 12967.) The respondent (the business that discriminated against you) has the option of having the case heard in court if the DFEH asked for damages for emotional distress or for an administrative fine. (Gov. Code, §§ 12965(c)(1).)

**If you have reason to believe that a business establishment has a continuing practice of denying equal rights because of sex, race, color, religion, ancestry, national origin or disability you may notify the district attorney, city or county**

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30. Laws governing health care service plans or insurer underwriting or rating practices are not affected by this provision.

attorney, the California Attorney General, or the DFEH. These government agencies have the power to bring legal action to stop the business from future acts of discrimination.

## CONTRACTS

### What Is A Contract?

A contract is an agreement between two or more people, usually to provide some goods or services or to perform some action that can be legally enforced. To have a contract, someone makes an offer, someone accepts that offer and there is "consideration." Consideration is any benefit that is given in exchange to the person who made a promise in the contract. A valid contract must also have a lawful "object," the thing which the person who receives the consideration promises to do or not to do. (Civ. Code, § 1549 et seq.)

**The general rule is that an offer can be revoked or taken back until it is accepted.** (Civ. Code, § 1586.) If you pay someone to keep an offer open for a period of time, an "option contract" is formed, and the offer may not be revoked for a certain period of time. (Civ. Code, § 884.010.) If someone makes an offer to you and promises not to take it back and you act because you relied on the offer, a contract is formed. Sometimes specific actions by parties can create "implied in fact contracts." (Civ. Code, § 1621.)

**A contract may be written or oral.** Generally, both written and oral contracts are binding and enforceable in a court of law. Contracts may be oral, unless specifically required to be in writing by law. (Civ. Code, § 1622.)

**However, some types of contracts are not enforceable unless they are written.** Examples of contracts that must be in writing are an agreement that cannot be performed within one year or during the lifetime of the promisor, a guarantee to pay someone else's obligations if he/she defaults, with certain exceptions, an agreement made upon consideration of marriage, an agreement for a lease that lasts for more than one year, and an agreement for the sale of real property. (Civ. Code, § 1624.)

**It is illegal for a contract for goods or services to be discriminatory** on the basis of sex, race, color, religion, ancestry or national origin, or because of location of business or lawful business associations. (Bus. & Prof. Code, §§ 16721-16721.5.) The laws that apply to making and enforcing contracts are technical and often require the services of a lawyer when disputes arise.

# Contracts With Specific Types Of Businesses

## Health Studio Contracts

**Health studio contracts must be in writing and you must be given a copy of the contract when you sign it.** (Civ. Code, § 1812.82.)

**Health studio contracts may not require financing for over three years, and services must begin within six months of signing of the contract.** Services may extend three years from the date the contract is entered into. (Civ. Code, §§ 1812.84 and 1812.85(a).)

**Health studio contracts must not be over \$1,000, exclusive of interest and finance charges, and must terminate if the death or disability of the customer renders him/her unable to receive all the services for which he/she has contracted.**

Usually the contract must contain a clause that if the person agreeing to receive services moves further than 25 miles from the studio and if unable to transfer the contract to a comparable facility, the person only has to pay for the services received, plus a predetermined fee.<sup>31/</sup> (Civ. Code, § 1812.89(b)(1) and (2).)

**You have a right to cancel any health studio contract within three business days of signing the agreement.** If you do so, you are entitled to a full refund. The three days do not include Sundays or holidays. Monies paid must be refunded within 10 days of receipt of the notice of cancellation, except that payment must be made for any services received prior to such cancellation. (Civ. Code, § 1812.85(b).)

## Commercial Dance Studio Contracts

**Civil Code section 1812.50, et seq. regulates contracts made with commercial dance studios.** None of the following regulations apply to educational or performance-oriented dance studios.

**Contracts for commercial dancing lessons must be in writing.** You must receive an exact copy of the contract when you sign it. (Civ. Code, § 1812.52.)

**No contract for commercial dance studio lessons and other services can require**

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31. Of course, if a person with a disability wishes to join a health club, or wants to continue with his/her membership following a disability, the health club may not terminate his/her contract. A health club is a public accommodation and a business establishment that must be accessible to persons with disabilities. (Civ. Code § 51; 42 U.S.C. 12182 (a).)



**payment in excess of \$3,750, nor payments or financing for more than two years from the date the contract is entered into**, nor shall the term of such contract be measured by the life of the buyer. However, the lessons or services can extend to a period seven years from the date the contract is entered into. (Civ. Code, § 1812.53.)

**Commercial dance lessons must begin within 12 months of the making of the contract.** The contract must indicate the hourly rate you are being charged for the lessons, your right to cancel the contract, and the fact that the studio is bonded, or has put up a cash deposit in lieu of a bond. (Civ. Code, § 1812.54.)

**You have a right to cancel a commercial dance contract at any time without giving a reason.** The cancellation must be in writing and must be sent to the specific address given in the contract. If you give notice of cancellation within 180 days after you receive a copy of the contract, the dance studio must refund all your money within ten days. The only amount the studio can keep is the amount charged for lessons you took before you canceled the contract. For cancellation after 180 days, the dance studio can keep 10% of the unpaid balance and payment for the lessons already received. The contract terminates upon the death or disability of the customer if the person is unable to receive all services for which he/she has contracted. (Civ. Code, § 1812.57; but see footnote 30, *supra*.)

## **Mail-Order Goods**

**If you receive goods or services in the mail or delivered to your home that you did not order orally or in writing, you do not need to pay for them.** These goods become gifts to you under California law. (There is an exception for contracted plans under which the seller periodically provides the consumer with a form to use to instruct the seller that he/she does not wish to keep the merchandise.) (Civ. Code, § 1584.5.)

**If you receive unsolicited goods or services and the company that sent the goods tries to collect payment for the goods, you can go to court to stop the company from bothering you.** If you win in court, you may also be awarded attorney's fees. You may wish to report such collection tactics to your local district attorney or to the Attorney General. (Civ. Code, § 1584.5.)

## **Door-to-Door Sales**

**For your protection, California and federal law now permit the buyer of certain products or services that are sold in the home**, (including courses of instruction, but **not** including the services of real estate brokers, physicians, attorneys, security

dealers or investment counselors, optometrists, dentists, and certain financial services, certain contractors, insurance sales and mobile homes or goods sold with them, and most vehicles or goods sold with them) **to cancel a contract** if the following conditions exist:

- ! The contract is for more than \$25, including any interest or service charges. The law applies to cash sales, as well as to installment sales.
- ! The sale was made in the home.

**If you sign a contract you made with a door-to-door salesperson, you have three days<sup>32/</sup> to cancel the contract without obligation.** Sundays and holidays are not counted in the three days. The contract has to explain all of this, and there must be a cancellation form attached to the contract that you can tear off and send in. The salesperson must write on that form the date of the contract and the date by which you must cancel. The salesperson must also tell you of your right to cancel. (Civ. Code, §§ 1689.5-1689.7.)

**If you cancel a door-to-door contract, the company must return all of your down payment within 20 days of cancellation, and can make no charge for the cancellation.** You must, of course, be willing to give back the goods if you have received any, and to take reasonable care of them while in your possession. However, the seller is responsible for collecting the goods, and if the seller fails to pick up the goods in 20 days, you may keep them. (Civ. Code, § 1689.11.)

## INSURANCE

**There are many types of insurance that provide valuable protection** against accidents, illness, unemployment, and for survivors of deceased persons. In this chapter, four types of insurance are described:

- ! medical insurance
- ! disability insurance
- ! automobile insurance
- ! life insurance.

For each type of insurance, there is a description of the general protection given, types of benefits paid, and equal rights under insurance laws. For specific questions about your own policies, you should contact your insurance agent or the

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32. You have seven business days to cancel a home solicitation contract or offer for the purchase of a personal emergency response unit, or for the repair or restoration of residential premises damaged by certain disasters. (Civ. Code, § 1689.6(b) and (c).)

state Department of Insurance, Consumer Services Bureau.

**No insurer is allowed to refuse to issue any contract of insurance or to cancel or decline to renew such insurance because of the sex,** marital status or sexual orientation of the insured or prospective insured. (Cal. Code Regs., tit. 10, § 2560.3.)

**In November 1988, California voters passed Proposition 103** (Ins. Code, § 1861.01 et seq.), an insurance initiative requiring companies to reduce rates for automobile, fire and liability insurance and to offer a "good driver discount plan." In addition, it requires the state insurance commissioner to approve rate increases, applies the Unruh Civil Rights Act and antitrust laws to the insurance industry, makes the commissioner an elected position, and allows banks to sell insurance.<sup>33/</sup>

## **Medical Insurance**

**Medical insurance pays all or part of your hospital and doctor bills when you are sick or injured.** You may have an individual policy, a group policy through your employer, or you may be eligible for a state health care plan, such as Medi-Cal. Private and public employers are required to give covered employees notice before their medical, surgical or hospital benefits are discontinued. Major problems or concerns related to your health insurance should be directed to a private attorney.

## **Medical Insurance for Women**

**Medical insurance policies must have the same waiting periods for men as for women.** However, a medical insurance policy, unless contained in an employee fringe benefit plan, may impose some minimum waiting period after the insurance coverage begins before the policy will pay for your pregnancy. (Cal. Code Regs., tit. 10, § 2200.10.)

**If your employer's group plan covers the wives and families of male workers, it must cover the husbands and families of female workers unless otherwise required by state law.** (Cal. Code Regs., tit. 2, § 7291.1(b)(3); 29 C.F.R. § 1604.9(d).)

**Medical insurance policies can ask women to have medical check-ups only if men are asked to have them also,** unless otherwise required by state laws. (Cal. Code

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33. The California Court of Appeal recently held that the Fair Employment and Housing Commission does not have jurisdiction over insurance providers in complaints alleging violations of the Unruh Civil Rights Act. (*Wilson v. Fair Employment & Housing Com.* (1996) 46 Cal.App.4th 1213.)

Regs., tit. 2, § 7291.1(b)(3).)

**Medical insurance policies that include coverage for mastectomy and prosthetic devices and reconstructive surgery incident to mastectomy must provide coverage for mammography** for screening and diagnostic purposes, upon the referral of the patient's physician. (Health & Saf. Code, § 1367.65.)

**A medical insurance provider may not deny, refuse to enroll, refuse to renew, cancel, restrict or otherwise terminate, exclude or limit coverage, or charge an enrollee a different rate for the same coverage because the applicant or enrollee is, has been or may be a victim of domestic violence.** (Health & Saf. Code, § 1374.75; and Ins. Code, § 10144.2.)

**Sponsors of employee benefit plans that provide medical insurance are required to offer continuing coverage for persons who would otherwise lose their coverage because of the death of their spouse, termination from employment, a reduction in work hours, or as the result of a divorce or legal separation.** (29 U.S.C. §§ 1161-1169; Health & Saf. Code, § 1366.20 et seq.)<sup>34/</sup> If any of these events occur, you should contact your plan sponsor to notify it that you want to continue medical insurance coverage. The plan sponsor is required to provide you with information regarding rights and responsibilities relating to continuing coverage.

**Beginning in 1998, group medical insurance providers for employers with more than 50 employees must offer comparable coverage for mental health benefits, as for medical and surgical benefits,** unless such coverage results in an increase of at least 1%, and there is a limitation on pre-existing condition exclusion periods. (29 U.S.C. § 1185a and 42 U.S.C. § 300gg.)

## **Medical Insurance and Pregnancy**

**Where an employer of 15 or more employees offers health or disability insurance coverage to its employees, that employer is required to cover pregnancy and related medical conditions to the same extent that other medical conditions are covered (although an employer plan does not have to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion.)** (42 U.S.C.

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34. The United States Supreme Court has agreed to review a decision by the 8th Circuit that an employer is not obligated under the Consolidated Omnibus Reconciliation Act of 1986 to temporarily provide continued health insurance when a former employee, both before and after termination, was covered under a spouse's or domestic partner's group health plan that had no "pre-existing condition" provision and presented no "significant gap" in coverage. (*Geissal v. Moore Medical Corp.* Case No. 97-689.)

2000e(b) and (k); 29 C.F.R. § 1604.10(b).)

**A medical insurance policy must provide the same pregnancy coverage for unmarried employees as it does for married employees.** (Cal. Code Regs., tit. 2, § 7292.6.)

**Under the California Unemployment Insurance Code, a woman can collect disability benefits from the state for absences due to normal pregnancy if a doctor certifies that she is disabled.** Such benefits can last for the same period allowed for any other disability. For information about pregnancy disability under California Unemployment Insurance, contact the state Disability Insurance office or the state Employment Development Department office nearest you. (Unemp. Ins. Code, § 2626(B)(1).) <sup>35/</sup>

**If employers not covered by Title VII provide more than six weeks of accrued leave for disability to temporarily disabled employees, they are required to provide at least six weeks of disability leave for pregnancy, childbirth or related medical conditions.** Even if an employer provides less than four months' leave for temporarily disabled employees, it must provide up to four months' leave to an employee disabled by pregnancy, childbirth or related medical conditions. (Cal. Code Regs., tit. 2, § 7291.)

**On or after January 1, 1980, every group policy of disability insurance** that covers hospital, medical or surgical expenses on a group basis and that offers maternity coverage in such group, shall also offer coverage for prenatal diagnosis of genetic disorders of the fetus by means of diagnostic procedures in cases of high-risk pregnancy. Such coverage will be offered under terms and conditions agreed upon between the insurer and the group policy holder. Prospective policyholders must be informed of the availability of such coverage. (Ins. Code, § 10123.9.)

**You may not collect state unemployment payments if you left your job solely because you are pregnant.** (*Gunn v. Employment Development Department* (1979) 94 Cal.App.3d 658.) You **can** collect state unemployment payments after the birth of your child or the end of your pregnancy, if you are able to work and your previous job has been filled and there is no comparable position for you. (Unemp. Ins. Code, §§ 1253 and 1256; Cal. Code Regs., tit. 2, § 7291.9.)

**It is illegal for you to be forced to leave your job because you are pregnant, unless in the opinion of your doctor or other licensed health care practitioner, you are**

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35. See Chapter One regarding Employment for a complete discussion of the rights of pregnant women in the work place and an explanation of the California Family Rights Act and the federal Family and Medical Leave Act.

**unable to perform the essential duties of the job or to perform these duties without undue risk to yourself or other persons.** Neither company policy nor a union collective bargaining agreement can require you to leave your job solely because you are pregnant. (Cal. Code Regs., tit. 2, § 7291.2(d); 29 C.F.R. § 1604.10(b) and (c).)

**Medical insurance policies cannot exclude coverage for medical complications arising from a pregnancy, such as complications arising from the termination of an ectopic pregnancy, or for disorders of the reproductive organs.** (Cal. Code Regs., tit. 10, § 2560.3; cf. *Jerger v. Commercial Ins. Co.* (Ohio Com. Pl. 1965) 211 N.E.2d 99.)

**Effective January 1, 1998, health care service plan contracts are not allowed to restrict benefits** for inpatient hospital care to a time period less than 48 hours following a normal vaginal delivery and less than 96 hours following a delivery by caesarian section, unless specified conditions are met. (Assem. Bill No. 38, 1997-1998 Reg. Sess.; Ins. Code, § 10123.87 and Health & Saf. Code, § 1367.62.)

## **Medical Insurance and Domestic Violence**

**Insurance companies cannot discriminate against you in the offering of medical insurance based on the fact that you are the victim of domestic violence.** (Ins. Code § 10705; Health & Ins. Code § 1357.03.)

## **Sterilization**

**If a disability insurance policy or self-insured employee welfare benefit plan pays for sterilization, it cannot place an exclusion, limitation or reduction on such benefit based on the reason for requesting the sterilization.** (Ins. Code, §§ 10120 - 10121.)

## **Private Disability Insurance**

**Private disability insurance pays you money to make up for wages lost when you are unable to work because of sickness or injury.** Men and women in the same job must be offered the same private disability insurance coverage. Benefits from private disability insurance must cover the same time period for women and men. If a policy provides coverage for work men do at home or for a relative, then it must provide coverage for the same work done by women at home or for a relative. (Gov. Code, § 12940 et seq.; 42 U.S.C. § 2000e(k).) Note: This does **not** mean that insurance companies must provide homemaker disability insurance.

**Every policy of disability insurance that includes coverage for mastectomy and prosthetic devices and reconstructive surgery incidental to a mastectomy must provide coverage for mammography upon referral by a nurse practitioner, certified nurse midwife or physician. (Ins. Code, § 10123.81.)**

**A disability insurance company cannot discriminate against a person carrying a gene which, under certain circumstances, may be associated with a disability in that person's offspring but not in her/him, such as Tay-Sachs disease, sickle-cell anemia, thalassemia trait or X-linked hemophilia. (Ins. Code, § 10143.)**

**A disability insurance company cannot refuse to insure or charge a different rate to a person with a physical or mental impairment, unless to do so is based on sound actuarial principles or is related to actual and reasonably anticipated experience (Ins. Code, § 10144) nor can they refuse to insure, limit the coverage of or charge a different rate for the same coverage, solely because of blindness or partial blindness.<sup>36/</sup> (Ins. Code, § 10145.)**

## **Automobile Insurance**

California law requires that all drivers obtain car insurance,<sup>37/</sup> unless you qualify for other forms of financial responsibility allowed by law and carry in the vehicle evidence of the form of financial responsibility. (Veh. Code, § 16020, et seq.) Insurance required by state law covers injuries to yourself and your passengers if you are in an accident, and injuries to the drivers and passengers of the other cars, if the accident is your fault. Car insurance may also pay for damages to your car due to an accident or vandalism.

**Automobile insurance rates have been based on your age, sex, driving record, and**

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36. Furthermore, effective January 1, 1998, disability insurers providing health coverage and health service plans cannot refuse to accept an application for insurance, refuse to issue or renew a policy, cancel a policy, or deny coverage under any policy because the applicant or any person to be insured is, or has been, a victim of domestic violence, except as specified in Insurance Code section 10144.2. (See also Ins. Code, § 10198.9.)

37. Proposition 213, passed by California voters in 1996, prohibits uninsured motorists and drunk drivers from collecting non-economic damages in any action arising out of the operation or use of a motor vehicle (Civ. Code, § 3333.3), and has recently been found not to violate the due process clause or equal protection clause of the California Constitution. (*Yoshioka v. Superior Court* (1997) 58 Cal.App.4th 972; *Quackenbush v. Superior Court* (1997) 60 Cal.App.4th 454.

**other factors.** Your driving record is of primary importance, and distinctions on bases prohibited by the Unruh Act, such as age and sex, may be unlawful. (Ins. Code, § 1861.03; and 68 Ops.Cal.Atty.Gen. 153 (1985).)

**An auto insurance company can charge you premiums based on the driving records of members of your household, including your husband, even if the policy is in your name.**

**An auto insurance company can insist on writing a policy for your entire household, rather than for you as an individual.**

## **Life Insurance**

**Life insurance is money intended to provide for your spouse and children (or other family members or friends) should you die.** The present statutory law allows a life insurance company to charge men and women different rates for life insurance. Life insurance companies use statistics on how long people are expected to live ("actuarial tables") to calculate different insurance rates for men and women. Women are usually expected to live longer, so their life insurance policy rates are usually lower. (Ins. Code, § 790.03(f).)

**However, it is the opinion of the Attorney General that the Insurance Code provision that mandates gender-based differentials in the contracting of life insurance and life annuities violates the equal protection clauses** of the United States and the California Constitutions. The Attorney General has opined that while women as a class may live longer than men as a class, statistics alone may not be sufficiently compelling to permit insurance companies to make broad generalizations that affect the benefits of individual women. (68 Ops.Cal.Atty.Gen. 153 (1985).) The issue has not been decided by California courts.

**If a life insurance company insures men with a particular type of job, it must insure women with the same type of job.** (Cal. Code Regs., tit. 10, § 2560.3(g).)

**If a life insurance company asks for a physical examination as a precondition to insurance, it must require the exam of both men and women.** (Cal. Code Regs., tit. 10, § 2560.3(k).)

**Life insurance companies must have the same conditions and benefits in their policies for women as those in their policies for men.** (Cal. Code Regs., tit. 10, § 2560.3(h),(i),(j),(l),(q) and (r).)

**A life insurance company cannot discriminate against a person carrying a gene**



**which, under certain circumstances, may be associated with a disability in that person's offspring but not in him/her, such as Tay-Sachs disease, sickle-cell anemia or hemophilia. (Ins. Code, § 10143.)**

**Note:** If a woman is unable to work due to pregnancy disability, she may collect disability benefits for absences due to pregnancy, where a doctor specifies that she was disabled. Pregnancy-related disability benefits are generally paid for a total of six weeks. See the chapters on Health Care and Employment for additional information.

**You cannot be discriminated against in the issuance of life insurance on the grounds that you are the victim of domestic violence. (Ins. Code, § 10144.3.)**

## **Where to Go for Help With Insurance Problems**

**If you believe that you have been refused insurance or have been treated differently because you are a woman or because of your marital status, you may wish to contact one of the following:**

### **California Department of Insurance, Consumer Services Bureau**

Offices in Los Angeles, San Francisco, Sacramento and San Diego  
(800) 927-4357  
(To file discrimination complaints, or ask questions about medical, automobile, life, or private disability insurance.)

### **California Department of Corporations, Division of Health Care Services Plan**

980 9th Street, Suite 500  
Sacramento, CA 95814-2725  
(916) 445-7205  
(To ask questions about health maintenance organizations and some prepaid insurance plans.)

### **California Employment Development Department**

Offices in Los Angeles, San Francisco, Sacramento, San Diego and other locations statewide.  
(916) 653-0707  
(To file discrimination complaints or ask questions about state disability and unemployment insurance.)

## California Department of Fair Employment and Housing

Offices in Bakersfield, Fresno, Los Angeles, Oakland, Sacramento, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana and Ventura.  
(800) 884-1684  
(Discrimination in employment, housing and Unruh Civil Rights Act violations.)

## Equal Employment Opportunity Commission

Offices in San Francisco, Fresno, Los Angeles, Oakland and San Jose.  
(See Chapter Nine, Directory of Services, for addresses and telephone numbers of the agencies which may help you with a particular problem.)

## PUBLIC ASSISTANCE

**Eight public assistance programs that provide money and other benefits to needy persons are discussed below for your information.** The information on public assistance provided in this handbook may not be completely accurate once recently enacted state and federal laws have been fully implemented. However, the following information will provide some basic guidelines for determining the public aid available and general eligibility criteria.

**In August 1996, Congress passed, and President Clinton signed into law, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996** ("The Welfare Reform Act"), that enacted a series of federal welfare and public assistance reforms. (Pub.L. 104-193, 110 Stat. 2105, 8 U.S.C. § 1601 et seq.) This act places a five-year limit on welfare benefits and requires welfare recipients to join work programs.<sup>38/</sup> (*Ibid.*) In addition to placing strict limits on the amount of welfare persons can receive, the new law restricts public aid to U.S. citizens and certain "qualified" aliens. Qualified aliens include: immigrants lawfully admitted for permanent residence under the Immigration and Nationality Act, 8 U.S.C. § 1801 et seq. (INA), those granted asylum, those who were admitted to the United States under section 207 of the INA, those paroled into the United States for a period of at

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38. Under the law, the first 20 hours (or the first 30 hours in a two-parent family) of work activity will have to consist of employment, on-the-job training, unpaid work experience, community service, job searches of less than six weeks, vocational training of up to 12 months, care of the children of someone participating in community service, or high school attendance for teen parents. After those hours, the following activities may count toward work participation goals: job searches beyond six weeks, job training directly related to employment, education related to employment for those who have not finished high school, or satisfactory attendance in high school or an equivalent program.

least one year, those whose deportation is being withheld, those granted conditional entry, and "battered" aliens if they don't reside in the same household as the batterer. (8 U.S.C. § 1641.) Legal resident aliens will no longer be eligible for public assistance for medical, social or health benefits. However, the changes in federal law that make legal immigrants ineligible for public assistance have been challenged in a case currently pending in the United States District Court, Northern District of California. (*Sutich v. Callahan*, Case No. C97-102SI.) States, including California, are required to implement the federal changes in state-controlled programs or risk losing federal funds. By the end of 1997, they were required to show that they had 75% of all two-parent welfare families in jobs or job-training and 25% of their total welfare caseload working. By 2002, they must have 90% of two-parent families and half of all families in work activities.

**In anticipation of the federal welfare reform changes, on August 27, 1996, Governor Pete Wilson signed an executive order** directing all state agencies and departments to identify programs subject to welfare reform restrictions regarding "unqualified" aliens, namely, illegal immigrants.<sup>39/</sup>

**On August 11, 1997, Governor Wilson signed into law the Thompson-Maddy-Ducheny-Ashburn Welfare to Work Act of 1997** (Assem. Bill No. 1542 (1997-1998 Reg. Sess.)), that went into effect January 1, 1998, for the 2.5 million Californians, including 1.7 million children, who receive family welfare benefits, and that substitutes the California Work Opportunity and Responsibility to Kids, or CALWORKS for the old AFDC program. CALWORKS allows cash or voucher payments up to the value of three months of aid to prevent the need for assistance. The Act provides for a five-year lifetime limit of welfare benefits for adults, but their children can still receive vouchers or cash grants and the counties have the option of providing parents with employment or other services, for which they may require the parents to work. Current recipients are limited to 24 consecutive months of aid, while new applicants are limited to 18 consecutive months; counties may, in some cases, extend that to 24 months. (The federal Welfare Reform Act allows the states to exempt from the five-year lifetime limit up to 20% of their caseload for hardship cases, including parents and caretakers over the age of 60; disabled, ill or incapacitated parents, or caretakers of disabled children; and non-needy caretaker relatives.)

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39. The Court of Appeal recently ruled that a trial court could not enjoin the state from enacting emergency regulations to comply with the Welfare Reform Act's provisions precluding the expenditure of public funds to furnish illegal aliens with routine prenatal health services. (*Doe v. Wilson* (1997) 57 Cal.App.4th 296.) However, permanent regulations are being drafted that specify a requirement for continued prenatal care for some battered women.

**The Act provides that grants will be reduced for adults who do not keep school-age children in the classroom** or who do not cooperate with county officials to establish paternity of a child or to recover child support from a spouse. The Act also requires that children be immunized within 30 days of a family being declared eligible for Medi-Cal, the state's health care system for the poor.

**Able-bodied recipients are required to earn their benefits**, either through community service, job-search activities, or job training at the rate of up to 32 hours a week (35 hours per week from the beginning for two-parent families).<sup>40/</sup> After eighteen months to two years, recipients who have unsuccessfully sought work will move into community service jobs while their search for regular work continues; grant benefits will be eliminated for parents who do not cooperate.

**It is estimated that 500,000 more jobs within five years will need to be created** to be able to put welfare recipients to work. A community college will provide various educational services to CALWORKS recipients. Assembly Bill No. 1542 requires the establishment of job creation and development and job training programs for CALWORKS recipients and other low-income individuals. Recipients must accept any valid job offer they receive; refusing an offer can mean the end of an adult's share of benefits. Allowable work-related activities include unsubsidized employment; on-the-job training; community service; vocational training (including GED (General Educational Development), English as a Second Language, community college and adult education); work experience; work study; grant diversion; and county-funded treatment for mental health or for drug and alcohol abuse (substance abusers will have at least two opportunities to receive treatment, but cannot be in treatment for over six months without concurrent work activity, unless treatment is full-time, live-in), and domestic violence counseling (the state will pay for benefits for legal immigrants who are victims of domestic abuse and are, or were, married to permanent residents or United States citizens).

**CALWORKS recipients who move into jobs can receive services to help them keep working.** These include child care,<sup>41/</sup> (the bill includes \$300 million in child-care funding), transitional Medi-Cal coverage, and help with enforcing child-support orders.

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40. Exempt from the work requirements are parents with infants under 6 months of age (the county has the option to extend this to one year); parents with children aged 10 and under, if no child care is available; domestic violence victims; pregnant women; participants in Cal-Learn (a program designed to provide schooling for teenagers on welfare with no high school diploma); all non-needy caretaker relatives; and persons with other good causes.

41. A system of child care will be available beginning with a client's entry into CALWORKS until a family's income reaches 75% of the state median. Direct state payments will be made to providers, and a sliding-fee payment schedule will be charged for all parents in all programs.

**Benefits can be lost for life for anyone convicted of serious welfare fraud**, such as claiming fictitious children or seeking benefits from more than one county. (Welfare fraud of less than \$2,000 results in a two-year ban on aid, while fraud of from \$2,000 to \$5,000 results in a five-year ban.)<sup>42/</sup>

**In addition to changes in federal law, in November 1994, California voters passed Proposition 187**, that limits state-funded public assistance to U.S. citizens, legal alien permanent residents, and certain legal temporary alien residents.<sup>43/</sup> Illegal aliens will no longer be eligible for public assistance for medical, social or health care benefits funded with state funds. (Welf. & Inst. Code, § 10001.5; Health & Saf. Code, §130.) Proposition 187 was found unconstitutional in *League of United Latin American Citizens v. Wilson* (1998) \_\_\_\_ F.Supp. \_\_\_\_, 1998 U.S. Dist. LEXIS 3418. This ruling will not affect the recent restrictions of federally-funded assistance programs, such as welfare benefits, Medi-Cal, Aid to Families with Dependent Children (AFDC) and the Special Supplemental Food Program for Women, Infants and Children (WIC.)

**If you believe that you may qualify for any of the benefits listed below, you are advised to contact the agencies listed to determine your eligibility.** All of the agencies listed will be affected by the recent changes in federal and state laws. (See Chapter Nine, Directory of Services, for addresses and telephone numbers of these agencies.)

## **Food Stamps**

**Food stamps are vouchers that you can exchange for food.** (Welf. & Inst. Code, § 18900 et seq.; 7 U.S.C. § 2011 et seq.; 7 C.F.R. § 271.1 et seq.) The amount of food stamps to which you are entitled is calculated according to the number of persons in the household. The monetary amount changes each October. Newly-passed Assembly Bill 1542 establishes the Electronics Benefit Transfer Committee to oversee the development and implementation of a statewide electronic benefits transfer system, that would apply to food stamps and other benefits.

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42. Under separate legislation (Assem. Bill No. 1008, 1997-1998 Reg. Sess.) effective January 1, 1998, those convicted of possession, use or distribution of controlled substances will be denied welfare, although their children will be eligible for vouchers for rent and utilities. (Welf. & Inst. Code, §§ 11251.3 and 17012.5.)

43. Proposition 187 states that persons present in the United States in violation of federal law may not be provided with public social services and publicly-funded health care, except for emergency medical care as required by federal law.

## **Eligibility**

**You are eligible for food stamps if:**

- ! You are a U.S. citizen or a "qualified alien" resident.
- ! Your maximum gross income, which is all income earned and unearned, including any form of public assistance, does not exceed a certain amount per month per person in the household (these figures change annually);
- ! Your maximum adjusted income (net) is no greater than a certain amount per month per person (these figures change annually);
- ! You have no more than a certain amount in resources (for one person); and
- ! You are registered to work.

**If you are elderly or disabled and live in a separate household, you are eligible** if your maximum gross income is no greater than a certain amount per person. You must be a U.S. citizen or a qualified alien resident to be eligible for food stamps. (7 U.S.C. § 2015(f); 7 C.F.R. § 273.4.)

**Discrimination is prohibited when determining eligibility for assistance.** State and federal law prohibits discrimination against any household by reason of race, color, religious creed, national origin, sex, marital status or political belief to the extent not in conflict with federal law in determining your eligibility for food stamps. (Welf. & Inst. Code, § 18907; 7 C.F.R. § 272.6.)

## **Determining Your Adjusted Income**

**To determine your adjusted income, first take your monthly income, then subtract the following amounts (deductions):**

- ! Generally, a food stamp household can deduct 20% of its earnings from work.
- ! A standard deduction of a set amount. This amount will be increased every October by a cost of living factor.
- ! Dependent care costs, if you pay them so someone in the household can earn up to a certain amount.
- ! Shelter costs (rent, mortgage, utilities, basic telephone, etc.) These costs may not exceed a certain amount per month in 48 states, including California.

**A household with a member who is 60 or older, or who gets Social Security**

**because she/he is disabled, can deduct the medical expenses** of that person over a specified amount each month. Those households can also deduct unlimited shelter costs, as opposed to other households, that are limited to a maximum deduction.

**Note:** Women residing in a shelter for battered women may qualify for food stamps if they prepare their own food and meet the other criteria listed here.

## **Expedited Assistance**

**Food stamp applicants may be eligible for expedited assistance if they meet certain criteria.** (Welf. & Inst. Code, § 18914(c).)

## **For Assistance**

**For information regarding current eligibility requirements and assistance with regard to food stamps,** please call your county's social services department and ask for the Food Stamp Program.

## **Medi-Cal**

**Medi-Cal is a federal and state program of medical assistance for needy and low-income California residents.**<sup>44/</sup> (Welf. & Inst. Code, § 14000 et seq.) No period of residency is required to establish California residency. However, new federal eligibility requirements will limit assistance to U.S. citizens or "qualified alien" residents. (Welf & Inst. Code, § 14007.5.)<sup>45/</sup>

**Note:** Emergency medical care is available without any eligibility restrictions, based upon need.

## **Eligibility**

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44. There is a wholly state-funded component of Medi-Cal called "Restricted Scope Medi-Cal." Under this state program, there are benefits, that include pregnancy-related services and long-term care, that are available to persons unable to meet the immigration status requirements of the federal Medicaid law. At the present time, there are proposed regulations to conform state law with federal welfare reform laws that would eliminate these services for "unqualified aliens."

45. Under the 1997 Congressional budget agreement, \$24 billion will be set aside over the next five years for medical care for uninsured children. States will be able to use the money to expand Medicaid, expand other programs, like those for state workers, or spend up to 15 percent of the money to pay administrative expenses, to locate uninsured children, and to buy services directly from doctors, hospitals and clinics. States would have to spend a substantial amount of their own money to qualify for these federal funds, but could charge small premiums, deductibles and other fees to low-income families.

**Eligibility for the Medi-Cal program in California is restricted to U.S. citizens or "qualified aliens" who are also eligible to:**

- ! receive supplemental security income through the state supplemental payment program (SSI/SSP);
- ! receive AFDC; <sup>46/</sup>
- ! are medically needy, are over 65 years old, blind, disabled or who meet the family circumstances required for AFDC; or
- ! are medically indigent.

## **Benefits**

**Medi-Cal benefits include** hospitalization, medically necessary doctors' visits, dental care, x-rays, prescriptions, and nursing home care. State law requires many Medi-Cal recipients to make co-payments of a certain amount each time they receive medical service, or when they go to an emergency room and do not really need emergency services. However, medical care or non-drug services cannot be denied for failure to make co-payments. (Welf. & Inst. Code, §§ 14134 and 14134.1; 42 U.S.C. § 13960(e).) Pursuant to newly enacted Welfare and Institutions Code section 14016.5, persons can receive benefits from the fee-for-service sector.

**Discrimination is prohibited.** State law prohibits licensed long-term health care facilities participating as a provider under the Medi-Cal program from discriminating against a Medi-Cal patient on the basis of the source of payment for the facility's services. (Welf. & Inst. Code, § 14124.10.)

## **For Assistance**

Call the California Department of Health Services and ask for the Medi-Cal program.

## **Aid to Families with Dependent Children**

**"AFDC" provides money and services to needy families** with children for a limit of five years to eligible recipients. AFDC is governed by federal and state laws, but the program is run by your county welfare department. (Welf. & Inst. Code, § 11200 et seq.; 42 U.S.C. § 601 et seq.) The Ninth Circuit ruled that recent migrants were entitled to a preliminary injunction against the enforcement of Welfare and

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46. AFDC will be replaced by a block grant known as Temporary Assistance to Needy Families or "TANF" under the new federal reform laws, beginning in the summer of 1998.



Institutions Code § 11450.03, that limits benefits to new residents in California for their first year of residency to the amount they received under the AFDC program in their state of prior residence. (*Roe v. Anderson* (9th Cir. 1998) 134 F.4th 1400.)

## Eligibility

**You may be eligible for AFDC if:**

- ! You are a U.S. citizen or "qualified alien;"<sup>47/</sup> and
- ! You are a single parent or pregnant woman in "need;" or
- ! Your children under 18 years of age lack parental support due to death, physical and mental incapacity, or unemployment of, or desertion by, one or both parents. Eighteen-year-olds may be eligible for assistance if they are attending high school or vocational school full-time and will graduate before their 19th birthday. (Welf. & Inst. Code, §§ 11250 and 11253.)

**Need** is based on your income and personal assets. **Child deprivation** means that one parent is absent from the home, disabled, deceased or unemployed or working less than 100 hours per month. Mothers, as well as fathers, can be considered unemployed parents under the AFDC program.

**Note:** You may qualify for food stamps if you qualify for AFDC.

## Benefits

**Maximum benefits for AFDC may be adjusted annually in July** to reflect cost of living increases, and are expressed in terms of maximum amounts per persons in the household. (Welf. & Inst. Code, §§ 11450 and 11453.) The federal restriction prohibiting aid to qualified aliens for five years beginning on the date of their entry into the United States applies to AFDC benefits. (8 U.S.C. § 1613.)

## For Assistance

Please call your county's social services department and ask for the AFDC program.

## Supplemental Security Income

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47. Children who are U.S. citizens remain eligible to receive public assistance, even if their parents are no longer eligible.

**Supplemental security income (SSI) is a federal program that provides financial assistance to needy people who are over 65, blind or disabled.** (Welf. & Inst. Code, § 12000 et seq.; 42 U.S.C. § 1381 et seq.)

## **Eligibility**

**You are eligible for SSI if you:**

- ! are 65 years of age or older or disabled or blind; and
- ! have a limited income and limited resources.  
(Welf. & Inst. Code, §§ 12050; 12150.)

According to Welfare and Institution Code section 12103, no citizenship requirement shall be imposed for SSI. However, section 402 of the Welfare Reform Act denies SSI to all noncitizen groups except (1) refugees, for the first five years after their admission into the United States; (2) persons granted asylum, for five years after they attain such status; (3) veterans and those on active duty (training excluded) and their spouses and unmarried dependent children; and (4) legal immigrants who established credit for minimum 40 quarters of covered employment. (Pub.L. 104-193, 110 Stat. 2105, 8 U.S.C. § 1601 et seq.)

## **Benefits**

**The maximum SSI benefits are set forth in section 12000 of the Welfare and Institutions Code and are subject to annual cost of living increases** in January of each year, although for many years such increases have not been granted and amounts have been decreased, except to the extent federal benefits have been increased. (Welf. & Inst. Code, §§ 12201, 12200.018 and 12201.03.)

**If you are living in the household of another and receiving room and board in-kind,** your benefits will be lower than those set forth in Welfare and Institutions Code section 12200. (Welf. & Inst. Code, § 12200(i).)

**If you are eligible for the above benefits, you will receive a Medi-Cal card, that entitles you to many free medical services.** (Welf. & Inst. Code, § 12305.)

**If you are living where you cannot prepare your own meals, you are entitled to an extra allowance.** (Welf. & Inst. Code, § 12303.7.)

**If you are living in a non-medical board care facility, the basic benefit is a certain amount per month.** Additionally, you are entitled to a minimum amount for your

personal needs not provided by the facility out of this first amount. (Welf. & Inst. Code, § 12200(g) and (h).)

## **For Assistance**

Please call the Social Security Administration of the U.S. Department of Health and Human Services and ask for the SSI program.

## **Unemployment Insurance Benefits**

**Currently, unemployment insurance benefits (UIB)** shall not exceed the lower of 26 times the weekly benefit amount or one-half the total wages paid during the base period, and may be extended to 52 times the weekly benefit during periods of high unemployment. (Unemp. Ins. Code, §§ 1281(b); 1271.)

You are eligible if:

- ! You are out of work because you were laid off through no fault of your own, or because you quit for good cause (terminated under the compulsory retirement provisions of a collective bargaining agreement, because you left employment to accompany a spouse to a place from where it was impractical to commute to employment, because you elected to be laid off instead of a person with less seniority pursuant to a collective bargaining agreement, you were usually harassed, because you were fired for something other than misconduct). (Unemp. Ins. Code, §§ 1256 and 1256.7); and
- ! You are able and available to work, and you have been unemployed for a waiting period of one week, you make a claim for benefits, you registered for work and continued to report for work (these requirements can be waived), you conducted a suitable search for work and, unless good cause for not doing so is shown, you participated in reemployment activities, such as orientation and assessment (Unemp. Ins. Code § 1253); and
- ! You earned at least \$1,300 during the quarter of your base period during which your wages were the highest from a UIB-covered employer during the "base period." The base period is defined in the Unemployment Insurance Code, §§ 1281 and 1275(a)(3)(A); or
- ! You earned at least \$900 during the base period in which your wages were the highest and you were paid wages during your base period equal to 1.25 times the amount

you were paid in this same period. (Unemp. Ins. Code, § 1281.)

There are restrictions on the eligibility of aliens for unemployment benefits. (Unemp. Ins. Code, § 1264.)

## State Disability Insurance

### Eligibility

**You are eligible for state disability insurance (SDI) (Unemployment Insurance Code, section 2601 et seq.) if you:**

- ! Are suffering a loss of wages as a result of a disability;<sup>48/</sup>
- ! Have a doctor's certificate<sup>49/</sup> that you are unable to do "regular and customary" work; (Unemp. Ins. Code § 2708)
- ! Were **not** injured on the job and, therefore, eligible to receive other benefits; (Unemp. Ins. Code § 2629)
- ! Have been paid wages of a minimum of \$300 by your employer during your disability base period.<sup>50/</sup> (Unemp. Ins. Code § 2652)
- ! Have made a claim for disability benefits, have been unemployed and disabled for a waiting period of seven consecutive days during which no benefits are payable, and with certain exceptions, have submitted to reasonable examinations. (Unemp. Ins. Code § 2627)

**Note:** If you were injured on the job, you may be eligible for workers' compensation. (Lab. Code, § 3200 et seq.) You are not eligible for benefits if you willfully make false statements or representations or withhold information in order to obtain benefits (Unemp. Ins. Code § 2675), are incarcerated (Unemp. Ins. Code § 2680), or committed a crime during at the time the injury was caused (Unemp. Ins.

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48. Disability includes an illness or injury, whether physical or mental, including any illness or injury resulting from pregnancy, childbirth, or related medical condition; inability to work because of a communicable disease; under treatment for acute alcoholism and under treatment for an acute drug-involved illness. (Unemp. Ins. Code, § 2626.)

49. No doctor's exam is required if it is against your religion, in which case a certificate from a duly authorized practitioner of your religion may be substituted. (Unemp. Ins. Code, § 2709.)

50. Disability benefit base period generally means the continuous period of unemployment and disability beginning with the first day with respect to which you file a valid claim for benefits. Two consecutive periods of disability due to the same or related cause or condition and separated by a period of not more than 14 days shall be considered as one disability benefit period.

Code § 2631). Proposition 187 provides that no benefits, including disability insurance, shall be payable to persons present in the United States in violation of federal law. The constitutionality of Proposition 187 is being litigated. (See discussion, *supra*.)

## **Benefits**

The maximum amount paid an individual during one disability benefit period generally shall be 52 times the weekly benefit amount, but in no case more than the total wages paid to the claimant during his/her disability base period. (Unemp. Ins. Code, § 2653.)

## **For Assistance**

Please call the California Employment Development Department office nearest you and ask about disability insurance claims. You may also want to contact a private attorney.

## **Women, Infants and Children (WIC)**

**Good nutrition, including foods rich in protein, calcium, iron, and vitamins A, C, and D, is very important during the critical times of growth and development of a child.** WIC is a wholly federally-funded program that provides nutritious food supplements and nutrition counseling to pregnant and nursing women and to infants and children who are five years old or younger. (42 U.S.C. §§ 1786 et seq.; 7 C.F.R. § 246 et seq.) You may qualify for this program if you are in need because of low income and have nutrition-related health problems. (Cal. Code Regs., tit. 22, § 40601 et seq.) The food supplements include iron-fortified formula, fortified milk and cheese, eggs, iron-rich cereals and fruit juices. This program is specifically exempt from the restrictions on eligibility contained in the Welfare Reform Act, and therefore, "unqualified aliens" may be eligible for benefits. (Pub.L. 104-193; Stat. 2105, 8 U.S.C. § 1601 et seq.) The welfare reform laws leave the discretion of who is eligible to receive public assistance to the decision of the individual states. At the present time, California does not limit benefits to legal or qualified aliens. (Health & Saf. Code, § 123275 et seq.)<sup>51/</sup>

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51. Due to the requirements under the new federal welfare reform laws, California passed Assembly bill 1542 in 1997, which indicates the eligibility requirements the state will be following in dispensing WIC funds. In addition, the restrictions of Proposition 187, the constitutionality of which presently is challenged, limiting state-funded public services and benefits to legal resident aliens, would not be applicable to WIC funds because there are no state funds in the WIC program.

For more information about WIC programs in your area, you may want to contact:

Department of Health Services  
WIC Supplemental Food Section  
3901 Lennane Drive  
Sacramento, CA 95834  
(916) 928-8500

## **General Assistance**

**Benefits and requirements vary from county to county.** Call your county's social services department and ask for the General Assistance program. It should be noted that the final regulations implementing the recently enacted federal welfare reform laws and the court challenges to Proposition 187 have not yet been completed. You will have to direct specific questions on eligibility to the agency providing the services you desire. (The Court of Appeal held that a General Assistance standard of aid adopted pursuant to Welfare and Institutions Code section 17000.5 satisfied a county's obligation not only to provide eligible persons with food, clothing and shelter, but also with medical care. (*Caulk v. Superior Court* (1998) \_\_\_\_Cal.App.4th \_\_\_\_, 98 Daily Journal D.A.R. 1975.).)

# CHAPTER THREE

## EDUCATION

**The California State Education Code, the U.S. Constitution, the United States Education Act Amendments (Title IX), and the Civil Rights Act of 1964 (Title IV), generally provide the basis for the legal rights which require equal opportunity for men and women in all aspects of education.** These laws cover all public schools, including elementary schools, high schools, community colleges, vocational and professional schools, California state colleges and the University of California system.<sup>52/</sup>

**Laws prohibiting discrimination in educational opportunities also apply to any private school or university,** if the institution or its students receive funds from the federal government. For example, if students participate in federally-funded student grant programs, or the science department receives federally-funded research grants, then all of the programs and facilities at the institution must provide equal educational opportunities to all students.<sup>53/</sup>

## ADMISSIONS AND SCHOOL PROGRAMS

**Women who attend public schools or colleges, or a private school or college that receives federal money, are entitled to equal opportunity** with respect to school

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52. By executive order, on June 18, 1997, President Clinton ordered all federal agencies to comply with Title IX, even if not technically required to do so. Schools run by the Defense Department and Bureau of Indian Affairs, as well as federally-sponsored fellowships and grants, will be affected.

53. In 1984, the U.S. Supreme Court ruled that Title IX, which prohibits discrimination in educational opportunities, only applied to those programs or services that directly received federal funding. (*Grove City College v. Bell* (1984) 465 U.S. 555.) In 1987, however, Congress added provisions to Title IX specifying that if an educational institution receives **any federal funding**, then all of its programs and services must provide equal educational opportunities. (Civil Rights Restoration Act of 1987, Pub.L. No. 100-259; § 908, 102 Stat. 28 (1988).)

admissions, enrollment in classes, financial aid, and participation in sports and clubs. The rights outlined in this chapter do not generally apply to students at private schools that receive no federal or state money.

## **Title IX**

**The United States Education Act Amendments of 1972, Title IX, generally prohibit educational institutions that receive federal financial assistance** from excluding or discriminating against a person on the basis of his/her sex in any educational program or activity. (20 U.S.C. §§ 1681 et seq.; and 34 C.F.R. Part 106.) This means that any private school or college that receives money from the federal government must generally be open to both men and women in its admission's policies, and the programs and services offered by the institution may not favor one sex over the other. The disparity in the funding of, and/or the scholarships available for, women's and men's athletic programs may be evidence of a violation of Title IX protections. (*Cohen v. Brown University* (1st Cir. 1996) 101 F.3d 155.)

**However, Title IX provides certain exemptions for educational institutions whose primary purpose is to train individuals for military service or the merchant marines, and for private institutions with a continual tradition of single sex admissions.** In addition, educational institutions controlled by religious organizations are exempt from the provisions of Title IX, if providing equal opportunities runs counter to the tenets of the religion. (20 U.S.C. §§ 1681(a)(3).)<sup>54/</sup> The exemptions for certain institutions may permit those institutions to continue to be eligible for federal funds, even if they discriminate on the basis of sex, but the exemptions will not excuse schools from other laws or regulations prohibiting discrimination in education, such as the Equal Protection Clause or the Civil Rights Act of 1964. (*United States v. Virginia* (1996) 518 U.S. 515; and *United States v. Mass. Maritime Academy* (1st Cir. 1985) 762 F.2d 142.)

**Educational institutions receiving federal money cannot discriminate in their admissions policies on the basis of marital or parental status.** (34 C.F.R. § 106.40(a); 45 C.F.R. § 86.21(c).)

**Furthermore, educational institutions receiving federal money cannot discriminate or exclude a woman** from admission on the basis of pregnancy, childbirth, termination of pregnancy or recovery therefrom. (34 C.F.R. § 106.40(b); 45 C.F.R. § 86.21(c).)

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54. A private religious college (exempt under Title IX) that practiced racial discrimination in its admission's policy was denied a charitable tax exempt status. The U.S. Supreme Court held that the school's discrimination policy was so out of step with the conscience of the community that it provided no public or charitable benefit. (*Bob Jones University v. United States* (1983) 461 U.S. 574.)



## Civil Rights Act of 1964

**The Civil Rights Act of 1964, Title IV, generally prohibits states from discriminating against any person because of his/her sex, including discrimination in the admission to state educational institutions.** (42 U.S.C. § 2000-6c.) Therefore, a state cannot decide that only men are permitted into the engineering department of a state university, or that only women may apply to a nursing school. Title IV is not limited to schools that receive federal funding, but generally applies to all public school boards and public colleges. (42 U.S.C. § 2000c(c) and (d).)

## Equal Protection Clause

**The Equal Protection Clause of the Fourteenth Amendment generally prohibits states from denying any person within its jurisdiction equal protection of the laws.** Excluding women from state-sponsored schools is a denial of equal protection. The state of Mississippi established a nursing school that admitted only women. The U.S. Supreme Court struck down the school's women-only admission's policy because it denied men equal protection of the laws. (*Mississippi University for Women v. Hogan* (1982) 458 U.S. 718.)

**For a public state school to justify gender-based admissions policies, it must show that the discrimination serves an important state objective,** and that the exclusion of one sex is "substantially related to the achievement of those objectives." (*Mississippi University for Women v. Hogan, supra*, 458 U.S. 718, 724.) Schools may not establish discriminatory admissions policies based on the belief that women would not fit into certain types of school programs. The U.S. Supreme Court recently held, in *United States v. Virginia, supra*, 518 U.S. 515, that the state of Virginia could not exclude women from its prestigious Virginia Military Institute based upon the unproven assertion made by school officials that women would not fit in with the school's atmosphere or teaching goals.<sup>55/</sup> The Supreme Court held that the school denied women equal protection of the laws because its exclusion of women was based upon unproven generalizations about the abilities and roles of men and women.

## California Law

**It is the policy in California to afford all persons, regardless of their sex, equal**

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55. In that case, the Court did not accept the testimony of the school's experts, and held that general categorizations based on the preconceived notions of the nature and abilities of one sex cannot be used to perpetuate or create legal, social or economic inferiority for women.

rights and opportunities in educational institutions. (Ed. Code, § 200 et seq.)

## Affirmative Action Programs

**Affirmative action admissions programs have been used by universities and graduate schools to provide an avenue to increase the admission of women, persons of diverse ethnic or racial make-up, and economically disadvantaged students.** The U.S. Supreme Court held in *University of California Regents v. Bakke* (1978) 438 U.S. 265, that the university's special admissions program was invalid under the Equal Protection Clause.<sup>56/</sup> A number of the court's opinions discussed that the goal of achieving a diverse student body was sufficiently compelling to justify consideration of race in admission's policies under certain circumstances.

**Preferential affirmative action programs in California may be eliminated or severely restricted in the future.** In 1996, California voters passed the California Civil Rights Initiative (Proposition 209) which prohibits the state and any other public entity from discriminating against, or granting preferential treatment to any group or individual on the basis of race, sex, color, ethnicity, or national origin in the areas of public employment, education or contracting.<sup>57/</sup>

Since the Ninth Circuit upheld the constitutionality of Proposition 209, preferential affirmative action programs, if any, used by public state colleges and graduate programs are illegal in California. (*Coalition for Economic Equity v. Wilson, supra*, 110 F.3d 1431.)<sup>58/</sup>

## Coursework

**Classes at public schools and at private schools that receive federal funds, must be open to both sexes.** Classes in homemaking, auto mechanics, gardening, and shop must be open to both male and female students. However, sex education

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56. However, the Fifth Circuit Court of Appeal recently held that the lack of diversity in a law school, even if there had been past discrimination against a certain group, could never be a compelling state interest to justify a race-based affirmative action program. (*Hopwood v. State of Texas* (5th Cir. 1996) 78 F.3d 932, cert. den. \_\_\_U.S. \_\_\_, 116 S.Ct. 2581 (1996).)

57. In 1995, the Regents for the University of California voted to discontinue affirmative action policies in the admission of students to the UC system. This new policy began with the 1997 school year.

58. A suit has been filed in Alameda County Superior Court alleging that the alumni association and Boalt Hall have created and administer race-based and sex-based scholarship funds in violation of Proposition 209. (*Driscoll v. Kay*, Case No. 790351-7.)

classes may be restricted to students of one sex.<sup>59/</sup> (45 C.F.R. § 86.34(e).)

**Counselors must not discourage or guide young women away from certain careers such as electronics, medicine, law and police work, just because the counselors believe such jobs to be "unsuitable" for women.** Counselors must provide all students, male and female, with available information on all careers. (45 C.F.R. § 86.36.)

## **Single Gender Academies**

**The Single Gender Academies Pilot Program provides an opportunity for school districts in California to establish single gender elementary and secondary schools and programs for students of each sex who would benefit from single gender education.** In 1996, the California Legislature passed a law permitting ten school districts to apply for \$500,000 grants to establish single gender schools or programs. (The first year's funding may be followed by a second year of funding.) The purpose of the pilot program is to establish diversity in educational opportunities for boys and girls. Enrollment in a single gender academy will be voluntary. (Ed. Code, §§ 58520-58524.) Academy programs have commenced in the Lincoln Unified School District in Stockton, the Butte Valley School District in northern Siskiyou County, and the San Francisco Unified School District. Additional single gender academies will be funded in Orange County, San Jose and East Palo Alto.

## **Gender Equality Review**

**To ensure that California schools are complying with laws regarding sexual discrimination,** the Superintendent of Public Instruction is required to conduct an annual evaluation of twenty schools to determine the number of sexual discrimination complaints received, and to ensure that all programs and services offered provide gender equality. (Ed. Code, §§ 252 and 253.)

## **Students with Disabilities**

The recently enacted Individuals with Disabilities Education Act ensures that students with disabilities are provided a free and appropriate public education, including special education and related services designed to meet the needs of

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59. Whenever any part of instruction on health, family life and sex education conflicts with the religious training or beliefs of parents, parents may submit a written request to excuse their children from such instruction. (Ed. Code, § 51240.)

children with disabilities. (20 U.S.C. § 1400 et seq.)<sup>60/</sup>

## **Release Time for Religious and Moral Instruction.**

**Parents may request release time from school attendance for their children** to receive moral or religious instruction off campus, for up to four days per month, if the student otherwise meets attendance requirements, and the school gives its consent. (Ed. Code, § 46014.)

**Federally-funded education programs for disadvantaged students do not violate the Establishment Clause if the instruction takes place on the grounds of a religious institution.** In a recent U.S. Supreme Court decision, the court held that a New York City program that sent public teachers into parochial schools to provide remedial education to disadvantaged students was not a violation of the First Amendment's Establishment Clause. (*Agostini v. Felton* (1997) \_\_\_ U.S. \_\_\_, 117 S.Ct. 1997.)

## **Scholarships**

**Scholarships and financial aid must be made available to all students on an equal basis.** Educational institutions may distribute scholarships or fellowships established pursuant to domestic wills, bequests, trusts, or similar legal instruments, or by acts of a foreign government that require funds be awarded to a particular sex. The overall distribution of such scholarship funds must be made in a manner that does not discriminate on the basis of sex. (34 C.F.R. § 106.37; Ed. Code, §§ 230(b) and 69500.)

**Specific scholarships for men or women may be legal.** For example, a women's club scholarship for the top woman senior in a high school is allowable, provided that the overall effect of the sex-restricted scholarships and other forms of financial assistance do not discriminate on the basis of sex. (34 C.F.R. § 106.37(b).)

**A post-secondary educational institution may provide a scholarship or financial assistance to an individual upon the basis of personal appearance, poise and talent, such as an award in a pageant in which participation is limited to one sex.** However, pageants must still comply with other nondiscriminatory provisions of state and federal laws. (Ed. Code, § 226; 20 U.S.C. § 1681(a)(9).)

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60. For more information on the rights of persons with disabilities see the latest Attorney General handbook on disability rights.

## Sexual Harassment

**It is California's policy to promote gender equality and to eliminate sexual discrimination in educational institutions.** (Ed. Code, § 212.6) To assist students and parents in knowing their rights and responsibilities, schools are also required to annually provide parents with their written sexual harassment policy. (Ed. Code, § 48980(f).)

**Students sexually harassed at school may take legal action against school districts.** Sexual harassment in the educational setting is defined as "unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature," made by either a teacher or fellow student. (Ed. Code, § 212.5.) The U.S. Supreme Court has held that school districts may be sued for sexual harassment perpetrated by a teacher against a student under Title IX. (*Franklin v. Gwinnett County Public Schools* (1992) 503 U.S. 60.) Likewise, students harassed by other students may sue a school district for failing to stop sexual harassment if administrators knew, or should have known, that the student was enduring a hostile educational environment, and failed to take prompt action to remedy the situation. (*Doe By and Through Doe v. Petaluma City School Dist.* (N.D. Cal. 1996) 949 F.Supp. 1415 (holding that the standards for employer liability in work-related sexual harassment cases based on Title VII apply to school districts in student-on-student harassment situations).)<sup>61/</sup>

**The use of sexually vulgar or obscene speech in college or graduate school courses may be permissible.** While Education Code section 212.5 defines sexual harassment to include unwanted verbal conduct of a sexual nature, First Amendment protection for free speech may still permit unwanted sexual speech in the classroom. In a recent case, the Ninth Circuit Court of Appeals held that a professor who used offensive, vulgar or obscene language in his classroom, including discussions of consensual sex with children, could not be disciplined for violating the school's sexual harassment policy, even though a female student was offended by his teaching style. (*Cohen v. San Bernardino Valley College* (9th Cir. 1996) 92 F.3d 968.)

**Students may not be disciplined for engaging in constitutionally protected speech**

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61. But see *Rowinsky v. Byran Independent School Dist.* (5th Cir. 1996) 80 F.3d 1006, where the court refused to impose liability on a school district pursuant to Title IX unless the student could prove that school administrators intentionally discriminated against the student by failing to remedy the sexual harassment because of her sex. The United States Supreme Court recently asked the U.S. Solicitor General's Office for its views on an 11th Circuit ruling that Title IX does not provide a cause of action against a school system for peer hostile-environment sexual harassment. (*Davis v. Monroe County Board of Education*, Case No. 97-843.)

**or communication.** Colleges and graduate schools may not discipline a student for speech that, if made off-campus, would be protected by the First Amendment. Private religious schools controlled by a religious organization are exempt from this provision. (Ed. Code, § 94367.)

**Students in private and public colleges and universities must be made aware of the policies and procedures established for protecting students from violent crimes and sexual assaults.** (Ed. Code, §§ 94380(c), 94385, 67380 and 67385.) Colleges and universities with more than 1,000 students must compile and maintain records of crimes, and sexual assaults on campus, and establish safety procedures for students, such as the location of security personnel, and safe routes through campus. In addition, the administration must provide written information setting forth the procedures for reporting crimes and the services available to victims of sexual assaults.

**In 1994, the Legislature enacted the California Schools Hate Violence Reduction Act of 1995.** This Act requires the State Board of Education, if private funds are available, at the request of the Superintendent of Public Instruction, to do the following:

- ! adopt policies and guidelines to prevent and respond to acts of violence;
- ! revise existing state curriculum, frameworks and guidelines and the moral and civic education curricula to include human relations education;
- ! establish guidelines for use in teacher and administrator in-service training programs: (a) to promote an appreciation of diversity; (b) to discourage discriminatory attitudes and practices among pupils, teachers, administrators, and counselors; and (c) to enable teachers and administrators to prevent and respond to acts of hate violence;
- ! revise guidelines previously adopted by the board to include procedures to prevent and respond to acts of hate violence; and,
- ! encourage teachers to impress upon the minds of pupils the meaning of equality and human dignity, and to foster an environment free from discriminatory attitudes in order to prevent acts of violence. (Ed. Code, §§ 45, 33032.5 and 44806.)

An act of hate violence is grounds for expulsion from school for grades four through twelve. (Ed. Code, §§ 48900.3 and 48915.)

## **Sports**

**Men and women/boys and girls must have an equal opportunity to participate in sports offered at schools.** (34 C.F.R. § 106.41; 45 C.F.R. § 86.41; and Ed. Code, § 230(c).) Schools may not decide to fund only the men's varsity teams, and yet refuse to fund women's varsity teams because of the expense. (*Cook v. Colgate University* (N.D. N.Y. 1992) 802 F.Supp. 737.)

**Equal opportunity does not mean that men and women/boys and girls must share the same toilets, showers or locker facilities.** Men and women are entitled to the same privacy in these facilities that they have always had. However, the facilities and services for men and women must be of equal quality. (Ed. Code, § 231; 45 C.F.R. § 86.33.)

**Physical education classes must be coeducational. However, such classes involving contact sports may be segregated by gender.** (34 C.F.R. § 106.34(c); 45 C.F.R. § 86.34(c).)

**"Equal opportunity" does not mean that all teams must be coed.** Separate teams may be offered for males and females where separate teams are necessary to meet the needs and abilities of the students. (Ed. Code, §§ 41, 230(c) and 66016; and 45 C.F.R. § 86.41(b).)

**Students of both sexes must generally be allowed to try out for any team in a non-contact sport if the school does not sponsor a team for the excluded sex.** This is true only if athletic opportunities for that sex have been limited in the past. (34 C.F.R. § 106.41; 45 C.F.R. § 86.41(b).)

**However, girls do not have a right to participate on a boys' contact sports team, whether or not there is a team in that sport just for girls.** (34 C.F.R. § 106.41; 45 C.F.R. § 86.41(b).)

**Equal opportunity in athletic programs means that schools must provide equivalent equipment, supplies, scheduling of games and practice times, travel and meal allowances, access to locker rooms, coaching, opportunity to receive academic tutoring, provision of medical, housing, dining and training facilities and publicity for girls' and boys'/men's and women's teams.** (34 C.F.R. § 106.41, 45 C.F.R. § 86.41(c) and Ed. Code, § 230(c).)

**Schools may spend money unequally on sports for each sex, if the quality of the programs for each sex is comparable.** (34 C.F.R. § 106.41; 45 C.F.R. § 86.41(c).) A significant difference between the female student population when compared to the percentage of females participating in athletic programs may be an indication of the discriminatory use of funds. (*Pederson v. Louisiana State University* (M.D. La. 1996) 912 F.Supp. 892, where the female student population made up 49% of the

students, but the athletic department had never expanded beyond 29% female participation.)

**All coaching positions must be open to candidates of both sexes; the best qualified candidate should be hired.** For example, a school cannot require that all of its boys' teams be coached by men and all of its girls' teams be coached by women. (34 C.F.R. § 106.51 et seq.; 45 C.F.R. § 86.51 et seq.)

## **Housing**

**Co-educational schools may provide separate living accommodations for each sex. Such accommodations may be separate, but each accommodation must contain equivalent facilities and services.** (45 C.F.R. § 86.32.)

## **Social Organizations and Activities**

**Most school activities must be open to enrollment by any qualified and interested student, regardless of his or her sex.** (Ed. Code, § 200 et seq.; and 20 U.S.C. § 1681(a)(6).)

**Private single sex activities and father-son/mother-daughter activities may sometimes be permissible, so long as opportunities for "reasonably comparable" activities are offered to students of both sexes.** (Ed. Code, § 225; and 20 U.S.C. § 1681(a)(8).)

**Recipients of federal funds may make requirements based on vocal range or quality.** For example, a soprano-alto chorus may be effectively limited to only women. (34 C.F.R. § 106.34(f); 45 C.F.R. § 86.34(f).)

**Private single sex social organizations, such as sororities and fraternities, may be permissible.** (20 U.S.C. § 1681(a)(6); and Ed. Code, § 223.)

## **GRIEVANCES AND ENFORCEMENT**

If you feel that a school or college has discriminated against you because you are a woman, or because of your marital status, or if you believe that a school or college has discriminated against your daughter or son, you may wish to contact the appropriate administrator of the school. School districts are required to have a Title IX coordinator and an established grievance procedure. (45 C.F.R. § 86.8 and Ed. Code, §§ 260-263.)



**You may want to contact:**

Superintendent of Public Instruction  
K-12 Network Planning and Information Center  
California Department of Education  
721 Capitol Mall  
P.O. Box 944272  
Sacramento, CA 94244-2720  
(916) 657-9662

Universities of California:  
Chancellor's Office for each university

California State Colleges and Universities:  
Dean of Students for each state college or university

California Community Colleges:  
Compliance Officer for each campus

California Attorney General's Office  
Public Inquiry Unit  
1300 I Street  
P. O. Box 944255  
Sacramento, CA 94244-2550  
(916) 322-3360 (Calling from outside of California)  
Toll-free (800) 952-5225 (Calling from inside of California)

U.S. Department of Education  
Office of Civil Rights  
50 United Nations Plaza, Room 239  
San Francisco, CA 94102  
(415) 437-7700  
(415) 437-7786 (TDY)

# CHAPTER FOUR

## HOUSING

### STATE HOUSING LAWS

**In California, it is illegal to refuse to rent or sell a home to someone based on his/her race, color, religion, sex, sexual preference, age, marital status, national origin, ancestry, disability (physical or mental), familial status, or any other unreasonable or arbitrary category.**<sup>62/</sup> When you seek to rent or buy an apartment, condominium or house, the owner, or his/her agent, cannot refuse to deal with you solely because you are a woman, divorced or separated, living with someone to whom you are not married, or gay. A single person with children is entitled to be treated the same as a married couple with children, with respect to housing agreements. (Gov. Code, § 12955 et seq., and Civ. Code, § 51 et seq.)

**It is also illegal for financial institutions, banks, or mortgage companies to set discriminatory policies** in their terms, conditions or privileges related to their services on the basis of race, color, religion, sex, marital status, familial status, disability, national origin, and ancestry. (Gov. Code, § 12955(e); Health & Saf. Code, § 35800 et seq.)

### What is Discrimination in Housing?

**The California Legislature has passed laws that prohibit discrimination in any aspect of leasing, selling, transferring, or financing of residential accommodations.** Discrimination based on any prohibited classification is outlawed.<sup>63/</sup>

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62. See footnote 66, for further explanation on the California Supreme Court's interpretation of arbitrary and unreasonable discrimination.

63. For additional information on housing discrimination, see the latest Attorney General handbooks on civil rights and the rights of persons with disabilities.

## Illegal Practices

**In California, the Fair Employment and Housing Act (Gov. Code, § 12955 et seq., hereinafter, "the FEHA") makes the following practices illegal in California, if they are done to discriminate on the basis of race, color, religion, marital status, national origin, ancestry, familial status, disability of the person, sexual orientation, age, or other legally recognized prohibited classification:<sup>64/</sup>**

- ! Refusing to sell, rent or lease housing.
- ! Discriminating in terms, conditions, privileges, facilities or services in connection with such housing.
- ! Canceling or terminating a sale or rental agreement.
- ! Providing segregated or separate housing.
- ! Discriminating in terms, conditions or privileges relating to financial assistance for the purchase, organization or construction of housing.
- ! Harassing, evicting or otherwise discriminating against persons who have complained about discrimination to enforcement agencies, or other persons.<sup>65/</sup>
- ! Making inquiries concerning the race, color, religion, sex, national origin, ancestry, familial status, sexual orientation, age, disability, or marital status of an applicant for housing.
- ! Printing, or publishing any notice, or making any statement with respect to the sale or rental of a residence that indicates a preference, limitation, or discrimination on the basis of race, color, religion, sex, national origin, ancestry, familial status, sexual orientation, age, disability, or marital status of an applicant for housing.
- ! Restrictions upon the transfer or use of realty because of race, color, religion, sex, ancestry, national origin, familial status, sexual orientation, age, disability, or marital status of an applicant for housing.
- ! Discrimination in the use of public land through the use of discriminatory practices, decisions, and authorizations. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under planning and zoning laws that make housing opportunities unavailable.
- ! Denying access to, or membership or participation in, a multiple listing

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64. Government Code section 12955(d), also makes it unlawful to discriminate against any person covered by the housing provisions of the Unruh Civil Rights Act. (Civ. Code, § 51.)

65. It is also unlawful to coerce, threaten or intimidate anyone for exercising or for aiding in the exercise of any rights under sections 12955 and 12955.1 of the FEHA. (Gov. Code, § 12955.7.)

service, real estate brokerage organization or other service because of race, color, religion, sex, ancestry, national origin, familial status, sexual orientation, age, disability, or marital status of an applicant for housing.

- ! Denying or otherwise making unavailable a dwelling place because of race, color, religion, sex, ancestry, national origin, familial status, sexual orientation, age, disability, or marital status of an applicant for housing.

**Note:** It is not unlawful for a person to discriminate when renting a room in his or her own home. However, the owner must live in the home and there may be only one boarder or renter in the home. In addition, the owner must still comply with Government Code section 12955(c), that prohibits discriminatory notices, statements, publications or advertisements in rental information. (Gov. Code, § 12927(c)(2).)

Religious organizations are also permitted to limit the sale, rental or occupancy of their dwellings, for other than commercial purposes, to persons of the same religion, unless membership in that religion is restricted on account of race, color, or national origin. (Gov. Code, § 12955.4.)<sup>66/</sup>

**Sexual harassment in the rental, sale, or terms and conditions of housing is prohibited.** It is illegal for a landlord or property manager to treat a woman less favorably in the rental or sale of housing, or to require that she submit to sexual comments or actions in order to maintain her residency.<sup>67/</sup> (Gov. Code, § 12955(d); *Brown v. Smith* (1997) 55 Cal.App.4th 767.) A landlord, or property manager may

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66. Historically, courts have not viewed the categories of persons set forth in the Unruh Civil Rights Act, as the complete list of protected persons. Courts have expanded protection to persons historically discriminated against for unreasonable, arbitrary purposes, such as homosexuals, families with minor children, or persons with unconventional lifestyles or political views. In 1991, however, the California Supreme Court held, in *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, that protection under the Unruh Act is limited to the classes of persons listed in the Act, classes of persons previously recognized in case law covered in the Act, and discrimination based on other personal characteristics. The court in *Harris, supra*, denied protection to a renter claiming discrimination based on her economic position. The court found that economics is not a personal characteristic, and not protected under the Act. (See also *King v. Hofer* (1996) 42 Cal.App.4th 678, where the court denied protection to a nonsmoker, indicating that nonsmokers were not a group that historically has suffered discrimination.)

67. It is also illegal for the owner of a housing accommodation to harass you, evict you or refuse to do business with you because you have opposed discriminatory actions. For example, a landlord may not evict you just because you have testified against him in a discrimination case. (Gov. Code, § 12955(f).)

be liable for sexually harassing a tenant. (Civ. Code, §§ 51.9 and 52; see also, *Brown v. Smith, supra.*)

## **Housing Discrimination Based on Your Marital Status**

### **You have a right to equal housing opportunities regardless of your marital status.**

The fact that you are single, married, divorced or separated may not be used as a basis to refuse to provide you with housing, or to treat you unfairly or more harshly than other persons. (Civ. Code, § 51; Gov. Code, § 12955(a).) In a recent California case, a landlord argued that renting to an unmarried couple violated her right to the free exercise of her religion. The California Supreme Court held that the freedom of religion clauses of the U.S. Constitution and the California Constitution did not exempt a landlord from the proscription against discrimination based on marital status found in the FEHA. (*Smith v. Fair Employment & Housing Com.* (1996) 12 Cal.4th 1143.)

**The law against marital status discrimination includes the right to equal housing opportunities for single parents.** A person may not discriminate against you just because you have children and are separated, divorced, unmarried or living with someone. Single parents must be treated the same as married parents. (Civ. Code, § 12955; Gov. Code, § 51.) The protection afforded single parents is also available to pregnant women seeking housing, and parents in the process of securing custody of children under 18 years of age. (Gov. Code, § 12955.2.)

### **Persons with disabilities and persons who have disabled children may not be discriminated against on the basis of their disability when seeking housing.**

Government Code section 12955.1, provides for minimum building standards in multifamily dwellings, to provide disabled access to persons with disabilities. In addition, a prospective tenant has the right to, reasonable modifications of existing housing, at the renter's expense, in order to make use of the premises. (Gov. Code, § 12927(c)(1).)<sup>68/</sup>

**You may be asked about your marital status if such information is related to whether you are financially qualified to purchase, rent or lease a home.** For example, if your income consists of alimony payments received from an ex-spouse, information about your alimony to determine your financial ability to buy or rent housing would be appropriate. However, this information may not be used to discriminate against you because you are divorced, separated, single, married, or living with someone to whom you are not married. (See *Smith v. Fair Employment*

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68. For further information on rights of persons with disabilities, see the California Attorney General's handbook entitled: *Legal Rights of Persons with Disabilities* (March 1997).

& *Housing Com.*, *supra*, 12 Cal.4th 1143.)

## Housing Discrimination and Children

**Both the FEHA and the Unruh Civil Rights Act** (Civ. Code § 51, et seq.) prohibit discrimination against persons with children in the rental, sale or terms and conditions of housing, including condominiums. (See also 75 Ops.Cal.Atty.Gen. 219 (1992).)

It is illegal for an owner or agent of a rental complex to refuse to rent housing to you because you have children under a certain age. (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721

.) It is not illegal, however, for owners to establish reasonable restrictions on children, based on the actual differences and needs of the users in the development.<sup>69/</sup> (*Sunrise Country Club Assn. v. Proud* (1987) 190 Cal.App.3d 377; *DFEH v. The McWay Family Trust* (1996) FEHC Dec. No. 96-07, at p. 25 [1996-1997 CEB 1.].)

**Condominium owners' associations may not, however, discriminate against people who have children** by including arbitrary and unreasonable covenants, conditions and restrictions in the homeowner association rules. (See *O'Connor v. Village Green Owners Assn.* (1983) 33 Cal.3d 790, where an association by-law that prohibited any residents under 18 years old was struck down as being arbitrary and unreasonable.)

**Children may be excluded from specially created senior citizen housing.** The provisions of the Unruh Civil Rights Act do not apply to housing designed to meet the physical and social needs of senior citizens, if the housing also meets the standards of Civil Code sections 51.2, 51.3, and 51.4. Mobile home parks for older persons, as defined in the Federal Fair Housing Amendments Act of 1988, (42 U.S.C. § 3601 et seq.) may also exclude children, and are not required to meet the standards of Civil Code sections 51.2, 51.3, and 51.4. (Gov. Code, § 12955.9; Civ.

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69. An example of unequal treatment of children is prohibiting a single parent with a child from occupying a one-bedroom apartment, but permitting two adults to share a one-bedroom apartment. (*Glover v. Crestwood Lake Section 1 Holding Corp.* (S.D.N.Y. 1990) 746 F.Supp. 301.) However, landlords may establish reasonable rules based on health and safety reasons. For example, landlords may reasonably require adult supervision for children under 14 years old when using a pool.

Code, § 51.3.)<sup>70/</sup>

**Although California law does not prohibit mobile home parks for older persons from restricting children, Civil Code section 798.76, permits the management of such parks to require that prospective mobile home purchasers comply with federal laws and regulations for senior mobile home parks.<sup>71/</sup>**

## **FEDERAL HOUSING LAWS**

**Federal law prohibits housing discrimination.** According to the federal Fair Housing Act and the Fair Housing Amendments Act of 1988, it is unlawful to refuse to sell, rent, or to refuse to negotiate for the sale or rental of a dwelling to any person, or to discriminate against any person in the terms, conditions or privileges of a sale or rental of a dwelling because of race, color, religion, sex, familial status, handicap (physical or mental), or national origin. (42 U.S.C. § 3601 et seq.) The following are prohibited acts (if based upon one of the above-mentioned categories):

- ! to refuse to rent or sell a dwelling, or to negotiate for the sale or rental of a dwelling.
- ! to discriminate in the terms, conditions and privileges of the sale or rental of a dwelling, or in the provision of services or facilities of the dwelling.
- ! to print, make or publish any notice in the sale or rental of a dwelling, of a statement or advertising that indicates a preference, limitation or discrimination based on race, color, religion, sex, familial status (families with person under 18 or someone who is pregnant), handicap, or national origin in an advertisement with respect to the sale or rental of a dwelling.
- ! to represent to a person because of his/her race, color, religion, sex, familial status, handicap or national origin that any dwelling is not available for inspection, sale or rental when it is available.
- ! to induce or attempt to induce, for profit, any person to sell or rent any

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70. The California Legislature recently enacted separate provisions relating to senior housing for the County of Riverside. (Civ. Code, §§ 51.11 and 51.12.) You are advised to discuss application of senior housing laws with local housing authorities if you live in the County of Riverside.

71. The Ninth Circuit Court of Appeals recently held that 1995 changes in the federal Fair Housing Act and HUD regulations that exempt senior housing from the provisions of the federal Fair Housing Act (and amendments) that prohibit housing discrimination based on familial status cannot be retroactively applied to cases filed before the amendments and regulations took effect. (*Covey v. Hollydale Mobilehome Estates* (9th Cir. 1997) 116 F.3d 830.)

dwelling by making representations about the entry into the neighborhood of a person of a particular race, color, religion, sex, familial status, handicap, or national origin.

! to discriminate in the financing of, or use of brokerage services, in the area of housing.

**Sexual harassment in rental housing is prohibited.** The Fair Housing Act prohibits gender-based discrimination in the sale or rental of housing, or in the provision of services or facilities connected with such housing. (42 U.S.C. § 3604.)

Discrimination may occur by treating women less favorably than men or by sexual harassment in the use or enjoyment of such housing. (*Honce v. Vigil* (10th Cir. 1993) 1 F.3d 1085.)<sup>72/</sup>

**Religious organizations are permitted to limit the sale, rental or occupancy of their dwellings, for other than commercial uses, to persons of the same religion.**

**However, membership in that religion must not be restricted on account of race, color, or national origin. (42 U.S.C. § 3607(a).)**

**Discrimination against persons with disabilities in the rental or sale of housing is prohibited.** Discrimination against a person with disabilities includes the refusal by an owner to permit the disabled person to make reasonable modifications, at his/her expense, to the interior of the dwelling, or for the owner to refuse to establish reasonable accommodations in rules, policies, practices, or services where it might be necessary to allow the person to use the dwelling.<sup>73/</sup> For example, it may be necessary to widen doorways, or provide curb cuts or ramps for access to public places, such as pools, or community rooms. All multifamily dwellings (buildings with elevators and four or more units, or ground floor units in other buildings of four or more units) built for occupancy after March 12, 1989, must be built with certain handicapped accessibility features. (42 U.S.C. §§ 3604-3605.)

**Residential real estate businesses may not discriminate against families with children. (42 U.S.C § 3605.)**

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72. A federal court summarily affirmed a lower court decision that awarded damages for sexual harassment to a woman who was evicted after she refused to pose nude for her landlord. (*Shellhammer v. Lewallen* (6th Cir. 1985) 770 F.2d 167.) In addition, a landlord's policy of not renting to women without cars was found to be sexual discrimination, despite the fact that the landlord argued that his policy protected women from possible rape and was not intended to discriminate against women. (*United States v. Reece* (D. Mont. 1978) 457 F.Supp. 43.)

73. All covered multi-family housing constructed for first occupancy after March 1993 must be designed in such a manner that the common and public use areas are readily accessible to persons with disabilities. (42 U.S.C. § 3604(f)(3)(C).) See footnote, 64, *supra*, for further information regarding disability rights.



**The prohibition against discrimination because of familial status does not apply to housing for older persons, if the housing meets requirements of federal regulations. (42 U.S.C. § 3607(b).)<sup>74/</sup>**

## **LEGAL RIGHTS AND REMEDIES**

**If you have a complaint about a landlord or homeowner who refuses to rent or sell to you, and you think you are being discriminated against, you should seek legal help.**

If you are considering legal action related to a housing discrimination claim, you may file a complaint with the Department of Fair Employment and Housing (DFEH). You may seek a settlement, an administrative action leading to the possible award of compensatory damages, including damages for emotional distress, or permission from DFEH to file a complaint in civil court. (Gov. Code, § 12987.)<sup>75/</sup>

**Federal housing laws provide legal remedies if you are discriminated against.**

Complaints must be filed with the Secretary of Housing and Urban Development (HUD) no later than one year after the alleged discriminatory housing practice has occurred or terminated. Federal law further provides for investigation by the Secretary and issuance of charges, conciliation agreements, administrative hearings, and the filing of civil actions by the U.S. Attorney General, where appropriate. (42 U.S.C. §§ 3610 and 3612.) Private persons may also file civil actions not later than two years after the occurrence or the termination of the alleged discriminatory housing practice or the breach of a conciliation agreement, whichever occurs last. (42 U.S.C. § 3613.)

**Any person who intimidates or interferes with the efforts of a person to sell or rent housing because of their race, color, religion, sex, familial status, handicap, or**

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74. In 1995, Congress passed the "Housing for Older Persons Act of 1995." That act amended the federal Fair Housing Act to eliminate the requirement that, in order to qualify for a senior housing exemption, the housing development have significant services and facilities specifically designed to meet the needs of seniors. (42 U.S.C. § 3607(b)(1).) HUD regulations were amended in 1996 to reflect this change in law. (24 C.F.R. § 100.304.) However, California law still requires that senior housing be designed to meet the "physical and social needs of seniors" in order to qualify for a senior housing exemption from familial status discrimination. (Civ. Code, § 51.3.) Because of this conflict, you are advised to discuss this issue with the Department of Fair Employment and Housing (DFEH) or Housing and Urban Development (HUD) if the housing complex where you seek housing is claiming to be "senior housing" and to be exempt from prohibitions against familial status discrimination.

75. Persons wishing to file cases in civil court under the FEHA must first obtain a right-to-sue letter from the DFEH. (Gov. Code, § 12980 (h).)

**national origin can be fined or imprisoned.** (42 U.S.C. § 3631.)

**You may also want to contact a private attorney or local private fair housing organization.** See Chapter Nine, Directory of Services, for addresses and telephone numbers of referral services. You may file an action directly in court under the Unruh Civil Rights Act. (Civ. Code, § 51.)

If you have a complaint about housing discrimination, you may contact:

**California Department of Fair Employment and Housing.** The Department's toll-free telephone number is (800) 884-1684.

**California Secretary of Business, Transportation and Housing,** which has offices in San Francisco and Los Angeles.

**U.S. Department of Housing and Urban Development,** which has California offices in Los Angeles, San Francisco and Sacramento. HUD may be able to assist in problems of discrimination in federally-funded housing and rental properties. However, federal anti-discrimination laws may not always be as broad as California laws.

# CHAPTER FIVE

## HEALTH CARE

**This chapter covers several areas of health care affecting women.** The following information is not meant to be exhaustive, and individual questions regarding your health should be directed to your doctor or medical professional. Topics discussed in this chapter include birth control, abortion, pregnancy, sexually-transmitted diseases or STDS (including AIDS), breast cancer, and assorted other health care issues of general interest to women.

### BIRTH CONTROL

**There is a wide range of birth control devices available to women.**<sup>76/</sup> As with many medical choices, there may be risks associated with the use of certain birth control methods, so you are advised to discuss with your doctor your own needs and the risks associated with your choice of birth control. No artificial birth control device or drug is 100% effective at preventing pregnancy.

Listed below are some of the most common forms of contraception.

#### The Birth Control Pill

**There is actually more than one kind of birth control pill.** "The pill" is a drug containing some combination of the hormones estrogen and progestin, which prevent a woman from ovulating.

**Caution is advised in the use of birth control pills** for any woman who has had any of the following conditions: uterine or breast cancer, varicose veins, phlebitis, heart problems, stroke, sickle-cell anemia, liver problems, migraine headaches, irregular

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76. For additional information on general health questions of interest to women you may wish to see the latest edition of *Our Bodies, Ourselves* (Boston Women's Collective, Inc., March 1996) or other medical handbooks on women's health.

menstrual periods, or hypertension. Caution is also advised for women who are breast-feeding, who are over 40 years of age, or whose mothers used the drug DES (diethylstilbestrol) during their pregnancies.

**The "morning-after pill" does not prevent contraception**, but prevents a fertilized egg from attaching itself to the uterus by bringing on a women's menstrual period. The "morning after" pill contains DES, and other drugs believed to have harmful side effects to users, and is generally prescribed in emergency situations. The "pill" does not protect women against AIDS or other STDs.

## **Norplant Implants**

**Norplant implants consist of six thin rods** containing a synthetic form of the female hormone progesterone. The rods are inserted under the skin of the upper arm and release the contraceptive hormone for up to five years. The rods must be implanted and removed by a physician. Side effects may include irregular periods and possible scarring and nerve damage if the rods are removed improperly. Future fertility does not appear to be affected by the prolonged use of Norplant. Norplant does not protect women from AIDS or other STDs.

## **Depo-Provera**

**Depo-Provera is a long-lasting contraceptive** that uses a synthetic form of the female hormone progesterone and is administered by an injection every three months. The prescriptions and the injections must be given by a physician. Side effects may include loss of future fertility for up to 18 months after discontinuing use, and the cessation of menstrual periods during the use of Depo-Provera. Depo-Provera does not protect women from AIDS or other STDs.

## **The Diaphragm**

**A diaphragm is a rubber shield worn internally**, and may be obtained through a doctor or family planning clinic. The diaphragm is most effective if used along with a spermicidal cream or jelly. It has not been found to have harmful side effects for most women users. The average failure rate for the diaphragm is 18 percent, depending on the consistent and proper use of the diaphragm. A diaphragm does not protect women from AIDS or other STDs.

## **The Intrauterine Device**

**The intrauterine device (IUD) is a device inserted into the uterus** which prevents a

fertilized egg from attaching itself to the uterus. Certain types of IUDs can now be left in place for up to ten years. The IUD can only be inserted by a medical professional. Use of an IUD may significantly increase your risk of getting pelvic inflammatory disease and painful periods, or it may become dislodged and cause an infection or puncture the uterus. Certain types of IUDs are no longer in use because they were found to cause serious injury to women. (*In re Northern Dist. of Cal., Dalkon Shield, Etc.* (9th Cir. 1982) 693 F.2d 847.) An IUD does not protect women from AIDS or other STDs.

## **The Cervical Cap**

**The cervical cap is a small, rounded cap made out of rubber or plastic** that fits over a woman's cervix. The cervical cap works by keeping sperm out of the uterus. The cervical cap must be prescribed and fitted by a medical professional. It works best when used with spermicidal jelly or foam. A cervical cap does not protect women from AIDS or other STDs.

## **The Sponge**

**The contraceptive sponge is made of polyurethane**, an artificial substance. The sponge covers the opening to the uterus, and absorbs and destroys sperm. You do not need a prescription for a contraceptive sponge. It may be purchased in many stores. It is less effective than the pill, diaphragm or IUD, but does not have the same side-effects. The sponge does not protect women from AIDS or other STDs.

## **The Condom**

**A condom is usually made out of thin latex rubber.** It covers the penis and prevents sperm from entering the vagina. Condoms may be purchased over-the-counter in many stores. Condoms work best when used with a spermicidal foam. Condoms, when used correctly, provide some protection from AIDS and other STDs. However, the failure rate for condom use in preventing pregnancy is considered to be between 4 and 17 percent, depending on the consistent and proper use of the condom.

## **The Female Condom**

**The female condom is a plastic sheath that fits over the cervix** and is worn by a woman internally. Female condoms may be purchased without a prescription. Female condoms work best when used with a spermicidal foam. When used correctly, they provide some protection against AIDS and other STDs. However, the failure rate for the female condom in preventing pregnancy is considered to be

as high as 21 percent, depending on its consistent and proper use.

## **Sterilization**

**Sterilization is a medical procedure that permanently prevents a woman from becoming pregnant.** Voluntary sterilization is legal in California for both men and women. A woman may be sterilized by disconnecting and tying her fallopian tubes, or by removing her ovaries or uterus.

## **Abstinence**

**Women have the legal right to obtain a variety of birth control medications or devices.** Women also have the right to control their reproductive lives by abstaining from sexual intercourse, if they so choose. Sexual abstinence is the safest and most effective manner to avoid an unwanted pregnancy and sexually-transmitted AIDs or any other STDs.<sup>77/</sup>

## **Where to Get Birth Control**

**Prescription birth control devices can be obtained through your doctor,** local Planned Parenthood office or county health or community clinic. Nonprescription birth control devices, such as the condom, the sponge, and spermicidal foams and jellies, may be purchased over-the-counter in many stores.

## **RIGHTS RELATING TO BIRTH CONTROL AND STERILIZATION**

### **Right to Obtain Birth Control Medication/Devices**

**Any woman, single or married, including a woman who is under 18 years of age, may obtain birth control medication** or devices without the permission of either parent or husband. (*Planned Parenthood of Missouri v. Danforth* (1976) 428 U.S. 52.) Women may obtain birth control for free or with a small co-payment from a local Planned Parenthood office, or community free clinic, or county health center. (Fam. Code, §§ 6920, 6925.)

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77. In 1996, Congress passed a series of welfare reforms, which include distribution of \$50 million per year for five years to help states establish educational programs promoting the social, economic and physical benefits of abstinence for unmarried persons. Public schools in California are also mandated to promote teen sexual abstinence in sex and family life educational programs.

## **Right to be Sterilized**

**If you are under 18 years of age and not married, you do need your parents' permission before you consent to sterilization.** However, even if you are under 18, you **do not** need your parents' consent to be sterilized if you are any of the following:

- ! married or divorced;
- ! on active duty in the United States armed forces;
- ! at least 15 years old, live apart from your parents or guardians, and are self-supporting or have received a declaration of emancipation pursuant to section 7210 of the Family Code; and
- ! able to understand the content and nature of the surgery.

You will be required to wait a minimum of 30 days after you have given informed consent before you can have the medical procedure. (Fam. Code, §§ 6920 and 6922; Cal. Code Regs., tit. 22, § 70707.1 (a) (4).)

Married women **do not** need their husbands' permission to consent to being sterilized. (*Kritzer v. Citron* (1950) 101 Cal.App.2d 33.)

## **Can a sterilization operation be performed on a woman without her informed consent?**

No woman can be sterilized without her full knowledge and consent. (Cal. Code Regs., tit. 22, §§ 70707.3-70707.7) Medical procedures, such as an abortion, childbirth or cancer treatment, may affect your ability to have children and should be thoroughly discussed with your doctor. If you suspect that a sterilization operation has been performed on you without your knowledge or consent, you may wish to contact an attorney.

## **What restrictions can hospitals or clinics impose when permitting sterilizations or abortions to be performed in their facilities?**

No health facility, clinic, county hospital or hospital formed by a hospital district, which permits sterilization operations for contraceptive purposes to be performed, can impose nonmedical requirements, such as age, marital status, or number of children, before they will sterilize you. However, private hospitals can refuse to perform sterilizations, as well as abortions, in their facilities. (Health & Saf. Code, §§ 1232, 1258, 1459 and 32128.10.)

## **Is financial help available for obtaining birth control devices or sterilization?**

If you qualify for welfare assistance, you may be eligible for assistance to obtain birth control counseling and treatment through the state Family Planning Services.<sup>78/</sup> Contact your local health department for more information. Medi-Cal is available for prescription birth control devices.

If you do not qualify for welfare assistance, you may still be able to obtain birth control information and treatment at family planning centers and clinics that operate on a sliding scale fee basis.

California Medi-Cal funding for sterilization is available only to persons 21 or older, and pursuant to the criteria set forth in California Code of Regulations, Title 22, sections 51305.1, and 70707.6.

If the sterilization is to be funded by Medi-Cal, the operation may not take place until 30 days after you have signed a consent form, except that in certain emergency situations the minimum waiting period for sterilization is 72 hours. (Cal. Code Regs., tit. 22, §§ 51305.1(a)(6) and 70707.6(a)(3).)

## **ABORTION**

**A married or single woman may legally obtain an abortion in California without the permission of her parents or husband.** If you have decided to have an abortion, you should protect your health by seeking medical help as soon as possible.

**The U. S. Supreme Court in *Webster v. Reproductive Health Services* (1989) 492 U.S. 490, held that, as a federal constitutional matter, certain restrictions on abortions are permitted.** Notwithstanding federal cases which limit or restrict abortions, in California a woman has the right to have an abortion. This is based on the California Constitution. (*Committee to Defend Reproductive Rights v. Myers*

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78. Recently enacted changes in federal welfare laws and the passage of California Proposition 187 will have a considerable impact on the eligibility criteria and conditions in federal and state public assistance programs. These changes in state and federal laws have not yet been fully implemented and both Proposition 187 and the federal welfare reform legislation are being challenged in the courts. For example, the 1997 federal budget bill bars the use of federal funds for abortion in programs providing health insurance to uninsured children and allows managed-care plans in Medicare and Medicaid to decline to counsel or refer for reproductive health care in general if the organization objects to the provision of such service on moral or religious grounds. See chapter on Economic Independence for further discussion of how the recent changes in public assistance programs may affect you.



(1981) 29 Cal.3d 252.)

Currently, there are no time restrictions on when during the pregnancy an abortion can be performed in California.<sup>79/</sup> However, in general, an abortion, poses fewer health risks when performed as early in the pregnancy as possible.<sup>80/</sup>

**Abortions must be performed by a licensed physician.**<sup>81/</sup> (Health & Saf. Code, § 123405.) Free clinics, public health clinics, county hospitals, women's health centers, some private doctors and hospitals, and Planned Parenthood clinics will perform abortions. You may contact the California Abortion Rights Action League in your city or county, the Department of Health Services, or your local county health department for more information on obtaining an abortion.

**In California, Medi-Cal must provide funds for abortions for women who are eligible to receive health benefits.** The California Supreme Court has held that California may not restrict state funding for abortions for poor women if it pays for a woman's general medical care. (*Committee to Defend Reproductive Rights v. Myers, supra*, 29 Cal.3d 252.) However, in 1980, the U. S. Supreme Court ruled that it was not unconstitutional for the federal government to refuse to pay for abortions for financially-needy women. Therefore, the federal government no longer helps pay for elective abortions. (*Harris v. McRae* (1980) 448 U.S. 297.)

**Minors do not need the consent of their parents to have an abortion in California.** In 1987, the California Legislature enacted a law which prohibited minors from consenting to having an abortion in non-emergency situations, unless the minor had the consent of one parent, or had received permission from the juvenile court. (Fam. Code, § 6925; Health & Saf. Code, § 123450 (a).) However, this law was found to violate the state constitutional right to privacy in *American Academy of Pediatrics v. Lungren*, (1997) 16 Cal.4th 307.

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79. The U.S. Congress recently passed a bill, (H.R. No. 1122, 105th Cong., 1st Sess. (1997)) to ban the use of intact dilation and extraction abortions, known commonly as "partial birth" abortions. This type of abortion procedure would be banned for use on fetuses after the fourth month. Although it was vetoed by President Clinton, an override attempt is expected to be made in 1998. The California Legislature did not pass a similar bill to restrict this type of abortion procedure in 1997, but a new bill to accomplish this will probably be introduced in January of 1998. At this time, there are no state or federal restrictions on abortions performed before the third trimester.

80. See footnote 93, for discussion regarding the abortion pill, RU 487.

81. The United States Supreme Court recently held that it was constitutional for states to require that all abortions be performed by a licensed physician. (*Mazurek v. Armstrong* (1997)\_\_\_U.S.\_\_\_, 117 S.Ct. 1865.)

**Women have a right to enter a health clinic or medical facility to obtain an abortion without being harassed,** threatened or otherwise intimidated. Persons who wish to demonstrate or otherwise make known their objections to abortions also have a right, within legally designated boundaries, to picket, hand out information, pray or carry on conversations with persons entering medical clinics or health facilities.

**The 1994 Freedom of Access to Clinic Entrances Act (FACE) prohibits obstructing, intimidating or interfering with the right of a woman to enter a medical facility to obtain reproductive services.** (18 U.S.C. § 248 et seq.) Persons violating FACE may be fined, imprisoned, and have civil penalties assessed against them. FACE has been challenged as being unconstitutional for infringing on the First Amendment speech rights of protesters. The United States Court of Appeals has held that FACE is constitutional. (*Terry v. Reno* (D.C. Cir. 1996) 101 F.3d 1412.)

**California law makes it a crime to intentionally block a health care facility.** (Penal Code, § 602.11.) It is also a crime for a person to harass a child because his or her parent works at a medical facility that performs abortions. (Pen. Code, 11414.) Civil Code section 3427 et seq, makes blocking a health facility a civil tort in which a plaintiff may seek civil damages and injunctive relief against protesters.

**The First Amendment speech rights of persons to peacefully demonstrate, picket, counsel, or pray at health facilities that perform abortions is protected, within legally-designated boundaries.** In *Madsen v. Women's Health Center, Inc.* (1994) 512 U.S. 753, the U.S. Supreme Court struck down an injunction prohibiting protesters from approaching any person within 300 feet of the entrance to a clinic, but upheld the injunction with respect to a 36-foot buffer zone around that clinic.<sup>82/</sup>

**In a more recent case, *Schenck v. Pro-Choice Network of Western New York* (1997) \_\_ U.S. \_\_, 117 S.Ct. 855, the U.S. Supreme Court upheld that portion of an injunction** that established a 15 foot buffer zone around a clinic entrance and driveway. The court held that the 15-foot buffer zone burdened "no more speech [of the protesters] than was necessary to serve a significant government interest." However, the court struck down that portion of the injunction that established a 15

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82. Generally, the courts do not recognize a person's right to be left alone in public. As the Court stated in *Madsen*, "...in public debate our citizens must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment." (*Madsen v. Women's Health Center, Inc.*, *supra*, 512 U.S. at 774, citing *Boos v. Barry* (1988) 485 U.S. 312, 322.)

foot "floating" buffer zone around persons and cars.<sup>83/</sup>

**In *Planned Parenthood Shasta-Diablo, Inc. v. Williams* (1995) 10 Cal.4th 1009, the California Supreme Court upheld an injunction keeping abortion protesters across the street from a clinic.**

**Lastly, the California Court of Appeals has held that portions of an injunction keeping protesters away from a clinic and its patients and staff, and the residence of its doctor were unconstitutional.** The parts of that injunction that prohibited persons from approaching any Planned Parenthood staff or patient, once that person made it clear he or she did not wish to be approached, and that prohibited protesters from coming within 250 feet of a doctor's residence were stricken by the court. However, that part of the injunction that banned protesters from coming within 15 feet of the clinic was held to be constitutional. (*Planned Parenthood Assn. v. Operation Rescue* (1996) 50 Cal.App.4th 290.)

**The facts of each abortion protest case are unique.** The constitutionality of injunctions issued to limit the activities of protesters must necessarily be decided on a case-by-case basis.

## **An Alternative to Abortion - Taking the Pregnancy to Term**

### **The Pregnancy Freedom of Choice Act**

**The Pregnancy Freedom of Choice Act helps unmarried, pregnant women under age 21.** In order to qualify for benefits under this program, you must also live in California, and you must intend to carry your pregnancy to full term.<sup>84/</sup> State services will pay for counseling care, as well as the services of a licensed maternity home.<sup>85/</sup> Your parents will **not** have to pay for any services under the Pregnancy Freedom of Choice Act. For more information regarding terms and conditions of eligibility, contact either the California Department of Health Services or your local county health department. (Welf. & Inst. Code, § 16147.)

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83. The Ninth Circuit recently struck down a Phoenix ordinance requiring an eight-foot floating buffer zone between a person utilizing a health care facility and a person participating in a demonstration activity at that facility, citing *Schenck* in so doing. (*Sabelko v. City of Phoenix* (9th Cir. 1997) 120 F.3d 161.)

84. See discussion on adoption in chapter on Domestic Relations.

85. See footnote 78, *supra*, for additional information concerning public assistance programs.

## **Adoption**

**Women who choose to carry their pregnancies to term may choose to give up their babies for adoption.** Many private adoption agencies provide pregnant women with free counseling, medical and legal assistance, and help in choosing the adoptive parents. These organizations may be found in your local telephone book. Women may also contact Children's Protective Services in their county to arrange to relinquish their parental rights to the state.

## **PREGNANCY**

**It is beyond the scope of this handbook to discuss all of the most important aspects of pregnancy.** However, for the health of mother and child, it is important for a pregnant woman to have good medical care and good nutrition while pregnant. The following is a list of organizations that provide assistance to pregnant women. Check with each organization for its particular eligibility requirements.

### **Maternity Homes**

#### **Los Angeles**

Mom's Clinic: (310) 925-2250.

Salvation Army Booth Memorial: (213) 724-0252.

St. Anne's Maternity Home: (213) 381-2931.

Angel's Way: (818) 346-2229.

His Nesting Place: (310) 422-2137.

New Life Beginnings: (310) 591-8119.

#### **Oakland**

Salvation Army: (510) 451-4514.

#### **Sacramento**

Salvation Army: (916) 441-5267.

#### **San Diego**

Door of Hope: (619) 279-1100.

Salvation Army: (619) 231-6000.

Care House: (619) 459-4828.

Catholic Charities: (619) 231-2828.

## **High-Risk Pregnancies**

**If you are experiencing a high-risk pregnancy, you may be able to get help from the state for specialized treatment.** (Health & Saf. Code, § 123475 et seq.)

The programs that may be available to you include:

- ! Consultation and education about your particular high-risk situation.
- ! A high-risk infant follow-up program. (Health & Saf. Code, § 123565.)

**These programs are available to high-risk pregnant women on a sliding scale fee system.** This means that you will be charged only what you can afford to pay. (Health & Saf. Code, § 123555.) If you would like more information about these programs, please call your local office of the California Department of Health Services.

## **Pregnancy Hospital Stays and Other Insurance Issues**

**A 48-hour hospital stay must be provided by insurers for normal deliveries. Insurance companies are now required by recent changes in federal law to provide coverage for at least a 48-hour hospital stay following the normal delivery of a baby.** In September 1996, President Clinton signed into law the "Health Insurance Portability and Accountability Act" (HIPAA, Pub. L. No. 104-191, 110 Stat. 1936 (1996).) In addition to other changes in laws governing insurance providers, the Act requires that insurance companies cover a 48-hour hospital stay for normal deliveries and a 72-hour hospital stay for a caesarean section delivery.<sup>86/</sup>

**Insurance companies must provide for primary care providers who are obstetricians and gynecologists.** Women may choose to see a gynecologist or obstetrician as their primary care provider without requesting special permission from their insurance company. (Health & Saf. Code, 1367.69; Ins. Code, § 11512.295.)

## **Infertility**

**Under California law, group disability insurance policies must offer coverage for the treatment of infertility,** except in vitro fertilization. (Ins. Code, § 10119.6.)

**A surgeon or physician is prohibited from removing sperm or ova from a patient for the purpose of reimplantation in another patient without the written consent of the donor patient.** (Bus. & Prof. Code, § 2260.)

## **Supplemental Food Program for Women, Infants and Children**

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86. A bill recently was passed by the California Legislature that added Health & Safety Code section 1367.62 and Insurance Code section 10123.87. These sections require insurance companies, as of January 1, 1998, to provide coverage for a minimum hospital stay of 48 hours for a normal delivery and a 96-hour hospital stay for a caesarean section delivery. (Assem. Bill No. 38 (1996-1997 Reg. Sess.).)

**Good nutrition is very important during critical times of growth and development of a baby.** You may be eligible for the Special Supplemental Food Program for Women, Infants, and Children (WIC), which provides nutritious food supplements and nutrition counseling to pregnant and nursing women, and to infants and young children.<sup>87/</sup>

For more information about WIC programs in your area, you may contact the following:

WIC Supplemental Food Section  
Department of Health Services  
3901 Lennane Drive  
Sacramento, California 95834  
(916) 928-8500

## **STDs**

### **Acquired Immune Deficiency Syndrome (AIDS)**

**Women do get AIDS.**<sup>88/</sup> It is estimated that AIDS-related illnesses are the third leading cause of death in women world-wide. HIV or human immune-deficiency virus, the AIDS virus, is a virus that attacks the body's immune system and makes it difficult to fight off other types of illnesses.

### **Getting AIDS**

**You may be infected with the AIDS virus by coming into contact with contaminated blood or bodily fluids.** This exchange may occur through sexual activity, blood transfusions, sharing a contaminated needle, or being born or breast-fed by an infected mother.

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87. The WIC program is specifically exempted from the eligibility restrictions contained in the newly-enacted federal welfare reform laws. In California, the WIC program has no eligibility restrictions for residency or immigration status. Proposition 187, even if held to be valid, will not impact the WIC program because it is a wholly federally-funded assistance program. It is not anticipated at this time that the California Legislature will pass legislation restricting the eligibility for women needing WIC benefits.

88. Additional information regarding women and AIDS and pregnancy and AIDS may be provided by your local county health department, or the AIDS support groups listed in this section.

**You cannot become infected by casual contact** with an infected person if you do not exchange blood or bodily fluids. You cannot be infected by donating blood at a licensed blood bank.

## **Precautions To Take Against Getting or Spreading AIDS**

- ! Do not allow the blood, semen, vaginal secretions or urine of your sex partner to enter your body unless you know that he/she is not infected.
- ! Use condoms for vaginal, oral and anal sex. A properly used, unbroken condom reduces the risk of coming into contact with the AIDS virus. The receptive partner (the one whose anus is being penetrated) is the one most at risk of contracting AIDS through anal sex.
- ! In addition to a condom, use a contraceptive foam, cream or jelly; they contain the spermicide Nonoxynol 9 that kills the AIDS virus on contact.
- ! Use rubber dams or other oral barriers for oral vaginal sex.
- ! Do not share intravenous needles, including tattoo needles.
- ! Do not have sex with an intravenous drug user who you know, or suspect, uses unsterilized needles.

## **AIDS and Pregnancy**

**If you are infected with the AIDS virus, you can infect your child.** If you have the AIDS virus, there is a 50% chance that you will give birth to a child who will be infected with AIDS. A child can get AIDS from an infected mother during pregnancy, childbirth, or breast feedings.

## **AIDS Testing**

**Health & Safety Code, section 121050 et seq., and Penal Code, section 1524.1 permit a victim of a violent crime in which bodily fluids are exchanged to ask the court to order a defendant who has been charged with the crime to undergo an AIDS antibody test,** if the crime could have resulted in transmission of the virus. If you are the victim of such a crime, consult the district attorney who is handling your case about these laws. The results of a blood test pursuant to Penal Code section 1524.1 cannot be used in any criminal proceeding as evidence of either guilt or innocence. (See further discussion of this topic in the Violent Crimes Chapter of the handbook.)

## **AIDS and the Law**

**AIDS is a relatively new disease.** The legal rights of people with AIDS and their families are currently being dealt with by legislatures and the courts. The law, as it relates to AIDS patients and their families, will continue developing over the next few years. Listed below are some of the basic rights of persons with AIDS in California.

**Generally, it is illegal for someone to test you for the AIDS antibody without your knowledge and informed consent to such a test.** (Health & Saf. Code, § 120990.)

**Generally, it is illegal for your doctor to give the results of your AIDS antibody test to someone else without your written authorization unless that person is reasonably believed to be your spouse, sexual partner or believed to have shared the use of a hypodermic needle.** (Health & Saf. Code, §§ 120980; 121015.)

**With certain exceptions, before you are given a blood transfusion, all donated blood must be tested for AIDS antibodies.** (Health & Saf. Code, § 1603.1.)

**Many cities have passed local ordinances prohibiting discrimination against people with AIDS or HIV infection.** Los Angeles, San Francisco, Oakland, Berkeley, and West Hollywood are among the cities in California that have passed such laws. You should contact your local city attorney or district attorney to see if such ordinances exist in your area.

**Discrimination against people with AIDS or with HIV infection by public accommodations and in the provision of business services is illegal under the Unruh Civil Rights Act.** (Civ. Code, § 51 et seq.)<sup>89/</sup>

**The ADA makes it unlawful for places of public accommodation, such as medical and dental providers, to discriminate against persons with AIDS.** (42 U.S.C. § 12182 (a); *Abbott v. Bragdon* (1st Cir. 1997) 107 F.3d 934, petition for cert. filed July 21, 1997.)

**The ADA also provides protection for persons with AIDS from discrimination in government services.** (*T.E.P. & K.J.C. v. Leavitt* (C.D. Utah 1993) 840 F.Supp. 110, where the court invalidated a Utah law that voided a marriage if one or more of the spouses contracted AIDs, and prohibited persons with AIDs from marrying in Utah, because the law violated the ADA.)

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89. For additional information regarding your rights as a person with AIDS, you may wish to consult the Attorney General's handbook entitled, "Legal Rights of Persons with Disabilities" (March 1997).



**Discrimination in employment opportunities against people with AIDS is illegal under the Americans with Disabilities Act (ADA).** It is illegal for a private employer to discharge a qualified individual because of his/her disability. (42 U.S.C. § 12112; *Doe v. University of Maryland Medical System Corp.* (4th Cir. 1995) 50 F.3d 1261.) A person who is HIV-positive has a physical impairment as defined under the ADA, and may request reasonable accommodations from his/her employer.<sup>90/</sup> (28 C.F.R. § 36.104; *Gates v. Rowland*, (9th Cir. 1994) 39 F.3d 1439.) Employers who receive federal funds are also prohibited from such discrimination. (29 U.S.C. § 794; *Jenkins v. Skinner* (E.D. Va. 1991) 771 F.Supp. 133; *Chalk v. U.S. Dist. Court, Cent. Dist. of California* (9th Cir. 1988) 840 F.2d 701.)

**Discrimination in employment against people with AIDS is illegal under state law, where there is no likelihood of transmission of the virus in the workplace.** (Gov. Code, §§ 12940(a) and 12926(h); *Raytheon Co. v. Fair Employment & Housing Com.* (1989) 212 Cal.App.3d 1242.)

## **Where to Go For Help**

**If you believe you may have come into contact with AIDS-contaminated blood or bodily fluids, you should seek medical attention** from a health care professional familiar with the virus.<sup>91/</sup>

For more information about women and AIDS, you can contact:

### **San Francisco Women's AIDS Network**

San Francisco AIDS Foundation  
3543 18th Street  
San Francisco, CA 94110  
(415) 621-4160

### **Sacramento AIDS Project**

(916) 448-2437  
(800) 367-2437 (24 hour information line)

### **Progressive Health Services**

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90. A woman with AIDS, whether or not she is symptomatic, is considered disabled for purposes of the ADA because AIDS substantially impairs her ability to have children. The ability to reproduce is a "major life activity" under the ADA. (*Abbott v. Bragdon, supra*, 107 F.3d 934.)

91. You may wish to ask your physician about the "morning after" medication used by some physicians to treat persons who believe they may have come into contact with the HIV virus before the virus may be tested.

8240 Santa Monica Boulevard  
West Hollywood, CA 90046  
(213) 650-1508

Or you may call your local county health department or AIDS hotline:

The San Francisco AIDS Foundation hotline:

In San Francisco	(415) 863-AIDS
from Northern California	(800) FOR-AIDS

Southern California AIDS hotline:

In Los Angeles	(213) 876-AIDS
from Southern California	(800) 922-AIDS

## **Other STDs**

There is a wide variety of treatable STDs. STDs range from herpes to vaginitis. Most, but not all, STDs can be treated with the use of antibiotics. One of the most common forms of STD which affects women is chlamydia. Chlamydia and other STDs can cause sterility. If you suspect that you might have an STD, you should consult your doctor, local health clinic, or Planned Parenthood without delay.

**Use of a condom may help prevent the spread of most STDs**, if used correctly and consistently.

## **BREAST CANCER**

### **Facts About Breast Cancer**

**Approximately one woman out of eight in the United States will develop breast cancer during her lifetime.** In 1996, breast cancer killed 44,000 women in the United States. The vast majority of these deaths occurred in women over the age of 50.

**Breast cancer can be detected in a number of different ways.** Most breast cancers are detected by women themselves during breast self-examination. Mammography, a low dose breast x-ray, can detect breast cancer much earlier than a physical examination, although its effectiveness is considerably reduced in women under 50 whose breasts are denser than those of older women. Medical authorities are not in agreement as to when, or how often women under 50 should

receive mammograms. Your medical history and lifestyle will factor into the appropriate time for you to begin receiving regular mammograms.

**Recently approved by the FDA is the "scintimammogram,"** a test that uses a nuclear probe to detect breast cancer. This test appears to be more accurate for younger women than the traditional mammogram. In addition, the "CEA-Scan," a test formerly used to detect colorectal cancer, is now also being used to detect breast cancer. You should consult with your doctor to determine which of the different tests would be most appropriate for you.

**Health providers may not refuse to provide experimental or investigational therapies for terminal patients. (Health & Saf. Code, § 1370.4.)** Patients with a life expectancy of two years may request an independent review of experimental or investigational therapies that their doctors believe may be more beneficial than available standard therapies. If the independent review recommends that the patient receive the experimental or investigational therapy, the health provider will be bound by the recommendation.

**Health providers may not enter into contracts with their service physicians that interfere with the physicians' ethical responsibility to discuss with their patients all relevant information concerning their treatment options, alternative plans or other coverage arrangements. (Bus. & Prof. Code, 2056.1.)** It is the intent of the Legislature that communication between patients and their physicians be free from interference from a health plan provider.

**There are a number of different methods of treating breast cancer.** The options include radiation therapy, drug therapy, and assorted forms of surgeries, including mastectomies, lumpectomies and experimental treatments. If you are diagnosed with breast cancer, you should consider obtaining more than one medical opinion before determining a course of action.

## **Breast Cancer and the Law**

**Under California law, the codes of professional medical conduct require that your doctor advise you of all surgical and other alternatives to treatment of breast cancer.** You have the right to choose surgical procedures less extreme than a radical mastectomy. (Health & Saf. Code, § 109275.)

**Medi-Cal and most insurance companies are required to cover the cost of mammograms if they provide health service plan contracts, policies of disability insurance, self-insured employee welfare benefit plans or nonprofit hospital service contracts that provide coverage for mastectomies.** (Health & Saf. Code, §

1367.65; Ins. Code, §§ 10123.81; and Welf. & Inst. Code, § 14132.16.)

**Pending federal guidelines for insurance, if implemented, will require a minimum 48-hour hospital stay for women recovering from mastectomies.** In early 1997, President Clinton formed an advisory group called the "Advisory Commission on Consumer Protection and Quality in the Health Care Industry." The advisory group will help establish federal guidelines for the minimum hospital stay insurance companies should be required to provide for women recovering from mastectomies. The current proposal suggests a minimum 48-hour hospital stay.<sup>92/</sup>

## **Gynecological Cancers**

**A recently enacted bill, Assembly Bill No. 833 (1997-1998 Reg. Sess.),** effective January 1, 1998, requires medical care providers to provide a standardized summary of the symptoms and diagnoses of gynecological cancers to their patients who come to them for a gynecological exam. (Health & Saf. Code, §§ 138.4 and 109278.)

## **Other Commonly Asked Health Questions of Concern to Women**

### **What is known about DES?**

**According to the Planned Parenthood Federation of America, DES was given to some pregnant women between 1948 and 1960 to prevent miscarriages.** DES was later discovered to be linked to genital abnormalities in children, and to cancer in women who were given the drug during pregnancy.

**If you were given drugs between 1948 and 1960 to prevent a miscarriage**, or if you are a child of a woman who was given drugs while she was pregnant with you, it is important that you see a doctor and undergo a series of medical examinations to detect and treat any abnormalities that resulted from DES.

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92. There is currently a bill pending before Congress to stop so-called "drive-by mastectomies." (H.R. No. 135, 105th Cong., 1st Sess. (1997).) This bill, if passed, will require a minimum 48-hour hospital stay for a woman recovering from a mastectomy. The California Legislature recently passed a bill to add Insurance Code section 10123.86, relating to insurance coverage for mastectomies and lymph node dissections for treatment of breast cancer. Insurance companies must allow the length of hospital stay to be determined by the attending physician and surgeon in consultation with the patient. (Sen. Bill No. 70 (1996-1997 Reg. Sess.)) However, the bill was vetoed by Governor Wilson.

**DES may be currently prescribed as a "morning after" birth control pill** to terminate an early pregnancy. If you are in an emergency situation, and are advised to use a "morning after" pill, you may wish to ask your doctor if he or she can prescribe a drug compound which does not contain DES.<sup>93/</sup>

## **What should I know about drug prescriptions?**

**California law allows pharmacists to substitute a generic drug for a name-brand drug that has been prescribed for you.** The substituted drug must have the same active chemical ingredients, strength, quantity, and dosage, and must be of the same generic type (as accepted by the FDA) as the prescribed drug. This law was enacted to save California consumers money since the same drug under one trade name may cost more than the drug sold under another name in the same generic form. Doctors often prescribe the better known and advertised trade name drugs. You may ask the pharmacists to substitute the generic type drug. A pharmacist may not substitute unless the drug product selected costs you **less** than the prescribed drug. A pharmacist may not substitute if the doctor indicated orally or in writing that he or she does not want any substitution for a prescribed drug. When a substitution is made, the pharmacist must **tell** you that the substitution was made and place the name of the dispensed drug product on the label. (Bus. & Prof. Code, § 4073.)

**California law also requires a pharmacist or pharmacist's employee, upon any request by telephone or in person, to give the retail price of any drug sold** at that pharmacy and to post a notice in the pharmacy of the consumer's right to this information. (Cal. Code Regs., tit. 16, § 1707.2.)

## **Are breast enlargement operations legal?**

Breast enlargement operations are legal. However, certain methods are not. The injection of liquid silicone into breast tissue is a crime in California, and is highly dangerous to the woman who receives the injection. If a doctor suggests this method of breast enlargement, report him or her to your local district attorney's

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93. Higher than normal doses of an estrogen-based birth control pill may also be used as a "morning after" pill if taken within 72 hours of unprotected sex. Consult your doctor for additional information or a prescription. The French abortion pill, RU 486, also induces an abortion in the early stages of pregnancy (less than nine weeks). RU 486 has been submitted to the FDA for testing and approval under the name Mifepristone. The efficacy and safety of RU 486 is being debated by medical authorities. Currently, only women involved in the testing of the pill have access to RU 486 in the United States.

office. (Pen. Code, § 382.7.)<sup>94/</sup>

If you are considering a breast enlargement procedure, you should choose your doctor carefully from those doctors who are certified by a nationally recognized board of plastic surgery. You may contact the Board of Medical Quality Assurance to find out if your doctor is board-certified, and if he or she has been the subject of a disciplinary proceeding. Public records are also available to investigate a doctor's licensing history, lawsuits filed against the doctor, and lawsuits that resulted in verdicts against the doctor.

### **Can an operation be performed on me without my consent and knowledge?**

It is illegal for a doctor to perform an operation on you without your voluntary and informed consent. Before you are operated on, your doctor must describe the risks of the operation to you. (*Berkey v. Anderson* (1969) 1 Cal.App.3d 790, 805.) You have a right to know about the medical care you are receiving. If there is something you do not understand or that you want your doctor to explain more fully, just ask. It is generally a good idea to get a second medical opinion before undergoing any form of major surgery.

## **LONG-TERM ILLNESS**

### **Durable Power of Attorney for Health Care**

**Any person may authorize another person to make health care decisions for him or her.** (Prob. Code, § 4650 et seq.) A document must be signed and witnessed by two adults personally known to you, or acknowledged before a notary public. The person given your power of attorney to make health care decisions for you may

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94. A large class-action lawsuit was filed in Louisiana against the Dow Chemical Co., alleging that the silicone in breast implants that Dow manufactured have leaked and caused various illnesses, including lupus and rheumatoid arthritis. In August 1997, a jury agreed with plaintiffs that Dow plotted to hide health dangers of silicone. Although the trial court decertified the class of 1800 women in December 1997, leaving damages to be assessed for only the eight original plaintiffs, the remaining plaintiffs will not have to prove Dow's negligence. By early 1996, 30,000 lawsuits had been filed against Dow Corning. With the exception of the Louisiana case, all other Dow Chemical cases have been moved to the bankruptcy court in Michigan, which is handling Dow Corning's bankruptcy. (Dow Chemical owns 50% of Dow Corning.) In late August 1997, the company put forward a reorganization plan that included a \$2.4 billion fund to be parceled out to the 200,000 women with claims against the company. Meanwhile, Bristol-Meyers Squibb, Baxter International, and 3M have set up a claims process that pays out between \$10,000 and \$250,000 to well over two-thirds of the women who brought claims against them and chose to settle.

consent to your doctor not giving treatment or stopping treatment necessary to keep you alive, although he or she may not authorize anything illegal, contrary to your known desires or, where your desires are not known, anything clearly contrary to your best interest. Unless you indicate otherwise, the person may also authorize an autopsy, donate your body or parts of it for transplant or educational purposes, and direct the disposition of your remains. Without such a power of attorney, medical and other decisions can be made by your spouse or next of kin.

**A durable power of attorney executed after January 1, 1992, for health care decisions may include the date on which you want the power of attorney to expire**, or on which it must be renewed. If you do not specify a date of expiration or renewal, the power of attorney will not expire unless one of the following conditions apply:

- 1) The power of attorney was executed after January 1, 1984, but before January 1, 1992; or
- 2) The power of attorney was executed after January 1, 1992, and contains a warning statement that refers to a seven-year limit of its duration.

**If one of the above conditions applies, the power of attorney will expire within seven years of execution**, unless a shorter time is stated in the document itself, or the person granting the power of attorney becomes incapable of making health care decisions. (Prob. Code, § 4654.)

**Powers of attorney may be useful for people who are living together but unmarried**, particularly same gender partners, to give the partners the same legal ability to make health care decisions as married people.

## **Natural Death Act**

**The Natural Death Act (Health & Saf. Code, § 7186 et seq.) recognizes the right of an adult to make a written directive to his or her doctor** instructing the doctor to withhold or withdraw life-sustaining procedures in the event the person becomes incurably ill.

## **Right to Refuse Medical Treatment**

**California courts have recognized that a competent adult patient with a serious illness has the right, over the objection of his or her physicians and the hospital, to have life-support equipment disconnected**, despite the fact that withdrawal of those devices will hasten his or her death, as long as he or she is advised of treatment

options. There is no legal requirement that prior judicial approval be secured. (*Bartling v. Superior Court* (1984) 163 Cal.App.3d 186; *Bouvia v. Superior Court* (1986) 179 Cal.App.3d 1127.) This right to refuse medical treatment may be exercised by the patient's conservator on his or her behalf if he or she is incompetent to act for himself or herself, even if the patient has not signed a power of attorney explicitly authorizing such action. (*Conservatorship of Drabick* (1988) 200 Cal.App.3d 185.)

## **Right to Die**

**The United States Supreme Court recently decided two cases challenging statutes that make it a crime for physicians to assist their patients in committing suicide.**

In *Washington v. Glucksberg*, the court held that there is no fundamental right to physician assistance in committing suicide. (*Washington v. Glucksberg*, (1997)\_\_\_ U.S. \_\_\_, 117 S.Ct. 2258.) In *Vacco v. Quill*, the court held that a New York state law making it a crime for a physician to assist a suicide did not violate the Equal Protection Clause. (*Vacco v. Quill* (1997)\_\_\_ U.S.\_\_\_, 117 S.Ct. 2293.)

## **Nursing Homes**

**If you, as a married person, enter a long-term care facility, such as a nursing home, only half of your community property, including income, is taken into account in determining your eligibility for Medi-Cal benefits to pay for the nursing home care.** You will be required to spend down your half of the nonexempt community property and all of your nonexempt separate property before being eligible for Medi-Cal benefits. You may transfer all of your interest in the home you own with your at-home spouse without affecting Medi-Cal eligibility. (Welf. & Inst. Code, § 14005.16, et seq.)

## **Health Care Responsibility**

**Relatives, other than spouses, are generally not held to be financially responsible for the cost of health care paid for under Medi-Cal program and received by an adult.** (Welf. & Inst. Code, § 14008.)



# CHAPTER SIX

## DOMESTIC RELATIONS

**Husbands and wives, and parents and children, have certain legally defined rights and responsibilities** toward one another. This chapter discusses the legal rights of people within such relationships. Topics discussed include: marriage, cohabitation, divorce, surrogate parenting, and responsibility for children, including adopted children and children of unmarried parents.

Most of the legal rights described in this chapter can be found in the Family Code, section 1 et seq. Other noteworthy codes, cases and opinions of the Attorney General will be cited, where relevant.

## MARRIAGE

**Marriage creates legal rights and duties between husband and wife.** Marriage affects rights of support, property, taxes, inheritance, and other matters discussed in this chapter. According to California law, through marriage, "husbands and wives contract toward each other obligations of mutual respect, fidelity, and support." (Fam. Code, § 720.)

### Requirements for Marriage

**There are a number of requirements that must be met before a woman and a man can legally be married.**

**Usually, both parties to a marriage must be consenting adults, 18 or older.**

However, if you are not yet 18, you may marry with the written consent of at least one of your parents or your guardian (if you have one), and a court order granting judicial permission for the union. (Fam. Code, §§ 301-303.) The court may require those who are not of legal age to participate in premarital counseling. (Fam. Code,

§ 304.)

**A marriage license is usually required in order to marry.** (Fam. Code, § 350.)

**There are procedures for marriage with a confidential license** for adults who have been living together, but the confidential marriage license is only valid for 90 days from its issuance and only within the county where it is issued. (Fam. Code, §§ 500-511.)

**Only persons of the opposite sex may legally marry,** according to state law. (Fam. Code, § 300.) Certain jurisdictions, such as San Francisco, Berkeley, West Hollywood, and Santa Cruz, have enacted domestic partnership ordinances which enable same sex adult couples to register at the city clerk's office as domestic partners. (See also San Francisco Ordinance No. 440-96, adopted November 1996, and under litigation in *Air Transport Association of America v. City and County of San Francisco*, U.S. District Court for the Northern District of California, C97-1763 PJH, which requires businesses that contract with the city to extend benefits to same-sex partners of employees; the ordinance was amended in November 1997 to allow department heads to waive requirements in certain cases, with the approval of the Human Rights Commission.)

**The Defense of Marriage Act denies federal benefits to same sex-couples** and allows states to disregard same-sex marriages, even if recognized in other states. (1 U.S.C. § 7; 28 U.S.C. § 1738C.)

**Finally, a marriage must be solemnized by an authorized person.** A legal marriage may be performed by a judge or a retired judge; a commissioner or retired commissioner of civil marriages; a commissioner or retired commissioner or assistant commissioner of a court of record or justice court in this state; any judge or magistrate of the United States; any priest, minister or rabbi of any religious denomination; and officials of certain nonprofit religious institutions licensed by a county. The person conducting the ceremony must be at least 18 years old. (Fam. Code, § 400-402.)

**You do not have to change your name when you get married.** Once you are married, you may keep your birth (maiden) name, take your spouses's name, or hyphenate your own birth name with your spouse's name. You are not required to take your spouse's last name upon marriage. In a proceeding for dissolution or nullity of marriage, the court, upon request of a party, shall restore the birth name or former name of that party. (Code of Civ. Proc., § 1279.6 and Fam. Code, §§ 2080-2082.)

## **Rights and Responsibilities**

**Upon marriage, each spouse enters into an agreement to support the other.** Each spouse is committed to using whatever resources are available for this purpose. If there is not adequate community property to provide support for your spouse, you are expected to expend your own separate property to support your spouse. (Fam. Code, § 4301.)

**California has community property laws.** If you lived in California during your marriage, everything you or your spouse own is either "community" or "separate" property. Unless you and your spouse agree otherwise, all property in or out of the state that is acquired by you and your spouse through either of your labor or skills during the marriage is community property. Each spouse owns one-half of all community property. This is true even if only one spouse worked outside the home during the marriage and/or the property is held in the name of only one spouse. If you were married in a state that does not have community property laws and while married, you and your spouse purchased a home or other property in that state before moving to California, the house will be treated as community property when you get a marriage dissolution in California, if it was bought with the earnings of either or both spouses during the marriage. This kind of property is called "quasi-community property." (Fam. Code, § 125.)

**During marriage, both husband and wife have an equal interest in all of their community property.** Each spouse has the right to manage and control the community property for the good of the family. This does not mean, however, that either you or your spouse may sell, lease for longer than one year, or give away real estate or personal property acquired during your marriage without written consent or the signature of the other, with certain exceptions. "Real estate" includes a home, land, or rental property. "Personal property" includes furniture, furnishings or fittings of the home, clothing, cars, money, and other personal goods. Each spouse owes a duty of good faith in dealing with the community property. This fiduciary duty, which continues until a petition for dissolution is dismissed, a judgment is entered or the court makes further orders, or the death of a spouse, includes the obligation to make a full disclosure to the other spouse of the existence and extent of all community assets and debts. This obligation can be enforced through a court proceeding brought within three years of the date a petitioning spouse had actual knowledge that the event for which the remedy is sought occurred, although these time limits do not apply where a spouse has died or there is an action for legal separation, dissolution or nullification of a marriage. (Fam. Code, §§ 1100, 1101 and 1102.)

**If you or your spouse manage a business or an interest in a business that is**

substantially community property, the spouse who manages the business or interest has primary, not sole, control or management of the business. The managing spouse must give the other spouse prior written notice of any major transactions. While the failure to give notice will not invalidate the transaction, the adversely-affected spouse may institute legal action to rectify any damage done to his or her interest in the business. (Fam. Code, §§ 1100 and 1101.)

**Some community property can be protected from the debts of your spouse.** Under California "homestead" laws, both husband and wife may declare a house and land as their homestead and thereby protect the house and land against claims of creditors. The law limits the amount of property that is protected by homestead rights. For information about declaring your property as a homestead, contact the office of the county recorder in the county in which the property is located or contact an attorney. (Code Civ. Proc., § 704.710 et seq.)

**Separate property includes all property that you or your spouse owned before you married.** Separate property can also include certain gifts and any inheritance or the rents or profits therefrom that one of you received either before or during marriage. Separate property can also include earnings of you or your spouse, if you have entered into a premarital or marital property agreement that the earnings are to be separate property and not community property. (Fam. Code, §§ 770 and 1500.)

**Any earnings made by you or minor children living with you or in your custody, after you and your spouse are separated, are your separate property.** (Fam. Code, §§ 771 and 772.)

**It is possible for separate property to become community property.** For example, if you put separate property money that you inherited in a savings account with mostly community property money, it may become community property. Or, if the married couple lives in and pays taxes or mortgage on a house that was the separate property of one of the spouses, the community may acquire an interest in the house. Married couples by written agreement or transfer, with or without consideration, may change the character of property from separate to community. (Fam. Code, §§ 850 and 853.)

**"Joint tenancy" is one way, beside community property, that two or more persons may own property together.** Under "joint tenancy," each owner has an undivided joint ownership in the property with a "right of survivorship." When one owner dies, the entire property passes to the other owner. For example, if you own property in joint tenancy with your husband, you will not be able to leave any part of that property to your children or anyone else. Upon your death, your interest in the property would pass automatically to your husband. (Civ. Code, § 683 and Fam. Code, § 750.)

**The use of joint tenancy ownership may reduce the need for probate of an estate.** (Prob. Code, § 6600(b)(1).) However, it will not eliminate the obligation to pay inheritance and estate taxes. (Rev. & Tax Code, § 13302 et seq.) "Probate" is the required court proceeding following a property owner's death. Through probate, the decedent's property is given to the remaining family members or friends according to the will and to state laws. Probate can be costly and time-consuming. If you have substantial assets, it is advisable that you contact a lawyer or tax accountant. (See Chapter Nine, Directory of Services, for the telephone numbers of Lawyer Referral Services.)

**"Tenancy in common" is the third way that two or more people may own property together.** Under "tenancy in common," each owner holds an equal interest as his or her separate property. If a married couple holds property as tenants in common, either spouse may sell or give away his/her interest in the property. Under both "community property" and "tenants in common" methods of ownership, when one owner dies, his/her share of the property will pass to other persons according to the directions in the deceased owner's will or, if there is not a will, to the deceased owner's descendants following the state law that applies if the deceased did not leave a will. (Civ. Code, §§ 685-686 and Fam. Code, § 750.)

**A lawyer, banker or other financial advisor can best explain to you the advantages and problems of owning property in each of these ways.**

## **Enforceable Agreements**

There are three types of enforceable agreements within marriage -- pre-marital agreements, agreements within marriage and agreements with other persons.

### **Agreements Before Marriage**

Two people planning to marry may enter into an agreement before marriage ("prenuptial" or premarital agreement) concerning their future rights and obligations after marriage to property, earnings and other assets. So long as the prenuptial agreement does not promote dissolution of the future marriage, or vary the personal duties and obligations resulting from the marriage contract itself, it may be enforced in a court. Such an agreement should be consented to and signed by both parties, and may be recorded in the appropriate county offices. (Fam. Code, § 1600 et seq.; *In re Marriage of Higgason* (1973) 10 Cal.3d 476, 485.) The parties cannot contract away one party's obligation to pay child support. (*Plumer v. Superior Court*

(1958) 50 Cal.2d 631, 637.)<sup>95/</sup>

## **Agreements Between Husband and Wife**

During marriage, a couple may also make an enforceable agreement covering rights to property and support. A written agreement is the easiest agreement to enforce. However, a written agreement is not required, except for a transmutation, or change in the character of property. (Fam. Code, § 852.) Nonetheless, there must be an actual agreement, that is, a meeting of the minds between husband and wife. This may be proven in court by the way the couple conducted themselves or by testimony from persons who were told about the agreement. (Fam. Code, § 721.)

## **Agreements With Other Persons**

**Agreements made by either spouse with other persons during the marriage may be paid for out of the community property.** Some types of agreements, such as sale or purchase of real property, may require the signature of both spouses. However, there are many kinds of agreements that either spouse can enter into without the signature or consent of the other spouse. (Fam. Code, §§ 721, 910, 911, and 1102.)

## **Financial and Legal Rights within Marriage**

**When you are married, you may file a "joint" tax return with your spouse, or a "married filing separate" tax return.** State and federal tax laws are complicated. Various tax decisions will be of special importance to you because you are married. Tax issues of particular concern to married couples include "joint" and "separate" filing (Rev. & Tax Code, §§ 17045 and 18521), inheritance and estate tax planning, homestead rights, and your possible liability for tax fraud committed by your spouse. (Rev. & Tax Code, § 18531.) You may wish to seek advice on these and other tax matters from your local office of the California Franchise Tax Board, the Internal Revenue Service, or from a tax specialist or private attorney.

**When you are married, all parental authority over you ceases, even if you are under 18.** (Fam. Code, § 7505.)

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95. In a recent trial court case, a man who contracted to father a child with a woman in order to make money while he was a student twelve years ago was ordered by a judge to commence paying \$262 a month in child support. (*County of Santa Barbara v. Lee* (1997) Case. No. SB216912.)

**In most civil proceedings brought by or against your spouse, you have a right not to testify.** However, in some types of cases, such as certain criminal cases, juvenile court cases and commitment procedures, you may lawfully be asked to testify against your spouse. For example, a wife may also be required to testify against her husband if he beats or rapes her. (Evid. Code, § 970 et seq.)

**Either spouse may sue the other for damages from personal injuries.** If your claim is successful, any money or property your husband pays you must first be paid from his separate property, unless the injured spouse gives written consent to the use of community property for this purpose. After that fund is exhausted, he can use community property to satisfy the judgment. Whatever you receive is considered your separate property. (Fam. Code, §§ 782 and 781.)

**California law recognizes and prohibits marital rape.** If your spouse has raped you, you have the right to seek a legal remedy. (Pen. Code, § 262.) (See Chapter Eight for details.)

## **Inheritance**

### **Wills**

**Your will is your legal instruction indicating who will receive your property after you die.** Under California law, each spouse has the power to leave separate property and **one-half** of community property to any person, according to his or her will. A will can be a formal document drawn up by an attorney, which is signed by the testator (the person making the will) or by a conservator or by someone in the presence of and acting by the testator's direction, and signed by at least two witnesses, who should be disinterested parties. (Prob. Code, §§ 6110 and 6112.)

**Equally valid under California law is a "holographic will."** This is simply a **handwritten** statement of how you want your property disposed of after your death. It must be dated (day-month-year), **signed**, and **written entirely in your own hand**, except that the statement of testamentary intent can be part of a commercially-printed will form. (Prob. Code, § 6111.) If you leave no will or an invalid written will, state law will determine who receives your property. (Prob. Code, § 6400 et seq.)

### **Rights as the Spouse of the Deceased**

**A wife or husband is entitled to at least one-half of the community property upon the death of the other spouse.** The power of the deceased spouse to dispose of community property and quasi-community property to other persons by a will is

limited to half of the property. The deceased spouse may, of course, specify in the will that all community and quasi-community property is to go to the surviving spouse. If the deceased left no will, the surviving spouse will receive all of the community and quasi-community property. (Prob. Code, §§ 6101 and 6401.)

**In most cases, it may be necessary to go to court to confirm title to community property left by a deceased spouse.** These court procedures are simplified in cases involving only community property left to the surviving spouse, and do not require probate administration of that portion of the estate. (Prob. Code, § 13650 et seq.)

**If a husband or wife died leaving separate property but no will, the separate property will be distributed under law between the surviving spouse and the deceased's children** (half to the spouse and the remaining half divided equally among the children.) If there are no surviving offspring, then the property will be distributed among the surviving spouse and the deceased's lineal descendants, parents, siblings and/or nieces or nephews of deceased siblings. (Prob. Code, § 6401.)

**You can get support payments while your spouse's estate is being settled.** If you were dependent on your spouse for all or part of your support, the court has discretion to grant you, your children, and parents or adult children of the decedent who were dependents, an allowance while the estate is being settled. (Prob. Code, §§ 6540-6545.) Also, you should contact your local Social Security office to determine your eligibility for survivor's benefits.

**Because of the technical legal requirements under property law and probate law,** it is recommended that a person with questions regarding inheritance seek help from a lawyer or tax accountant. In addition to questions concerning legal title to property, there may be problems concerning payment of debts (Prob. Code, § 11400 et seq.), payment of inheritance taxes, and other matters to be resolved before confirmation of title to property in the surviving spouse.

## **ENDING YOUR MARRIAGE**

**In California, there are four ways to end a marriage (or some of the legal consequences of a marriage) between two people.** The first is commonly called divorce; the legal term is "dissolution of marriage." The second is through a legal separation, which ends some of the legal consequences of the marriage. The third is an annulment; the legal term is a "nullity." Finally, a few types of marriages can be ended by having them declared void. Marriages which are considered void include bigamous and incestuous marriages.



# **Dissolution of Marriage (Divorce)**

## **Grounds for Divorce**

**In California, the law provides for "no fault" divorce (called dissolution of marriage).** This means that to dissolve your marriage and restore you to the state of an unmarried person, it is not necessary to prove that you or your spouse have done something wrong. (Fam. Code, § 2300.) It is only necessary to convince the court that you and your husband have "irreconcilable differences." (Fam. Code, §§ 2310 and 2311.) The other ground for dissolution in California is incurable insanity of one spouse. (Fam. Code, § 2312.) Generally, the only time specific acts of wrongdoing in the marriage are pertinent is when the acts are relevant to the award of custody of the children. (Fam. Code, § 2335.)

**"Irreconcilable differences" mean that there has been a serious breakdown in the marriage and that there are convincing reasons why the marriage should not continue.** As a practical matter, if you and your spouse agree that there are irreconcilable differences and that your marriage cannot continue, the court will usually grant the dissolution without question. (Fam. Code, § 2333.) However, if it appears to the court that you and your spouse may get back together again, the court may delay the dissolution proceedings to allow you time to reconcile, although this does not usually happen. During the period of the continuance, the court may make orders for the support and maintenance of the parties, the custody of the minor children of the marriage, the support of children for whom support may be ordered, attorneys' fees, and for the preservation of the property of the parties. (Fam. Code, § 2334.)

**Incurable insanity of one of the spouses at the time the petition was filed and continuing to the present as a ground for dissolution must be proved by competent medical or psychiatric testimony.** (Fam. Code, § 2312.) Divorce on the grounds of incurable insanity does not relieve the spouse from an obligation to support the insane spouse. (Fam. Code, § 2313.) If the mentally ill spouse does not have a guardian or conservator, the court will appoint one for him or her. (Fam. Code, § 2332.)

## **Procedures For Getting A Divorce**

**To get a divorce in California, you or your spouse must have lived in California for at least six months and in the county where you filed the petition for dissolution for at least the last three months.** (Fam. Code, § 2320.) A proceeding for legal

separation can be converted into a proceeding for dissolution once the residency requirements are met. (Fam. Code, § 2321.)

**A dissolution proceeding is begun when either spouse files a petition for dissolution with the superior court and serves a copy of the petition and summons on the other spouse.** (Fam. Code, §§ 2330 and 2331.) The court can grant a divorce decree by default, but must require proof of the grounds alleged, either before the court or by affidavit. (Fam. Code, § 2336.) In all cases where there are minor children of the parties, the offer of proof shall include an estimate of the monthly gross income of the parties (or a statement of why the declarant or affiant has no knowledge of this) and if there is a community estate, an estimate of the assets and debts to be distributed to each party. If the proof is by affidavit, the personal appearance of the affiant is only required under certain circumstances. Where a judgment of dissolution is to be granted upon the default of one of the parties, the signature of the spouse who has defaulted shall be notarized; the court clerk shall give notice of entry of judgment to the attorney of each party or to the party, if unrepresented; and the party submitting the judgment shall provide the court clerk with a stamped addressed envelope for notifying the other party or his/her attorney. (Fam. Code, § 2338.5.)

**If you file for dissolution, you must attend a court hearing.** Your spouse does not have to attend the court hearing if you and your spouse agree to the divorce and to any property settlement, spousal support, child custody, and child support matters. In that case, the dissolution is considered to be uncontested. If your spouse objects to the dissolution, but fails to show up at the hearing, the court will consider your divorce uncontested. (Fam. Code, § 2336.)

**The amount of time you will spend in court depends on a number of factors.** Hearings for uncontested dissolutions do not take very long. However, a hearing for a contested dissolution may take hours, days or even longer.

**Your dissolution can become final six months after your spouse is served with papers declaring your intent to divorce him or her.** However, a dissolution is not automatically final at the end of six months. You or your lawyer must ask the court for a "final judgment." The final judgment is a paper that must be signed by the judge and entered into the official court records by the county clerk before your marriage can be dissolved. You cannot legally remarry until the date set forth in your final judgment for when it becomes final. If an appeal is taken from the judgment, that may also prevent you from remarrying under certain circumstances. (Fam. Code, §§ 2201, 2338 and 2339-2344.)

**You can request by noticed motion that the court sever and grant an early and separate trial on the issue of the dissolution of the status of the marriage, apart**

from other issues. This is called a "bifurcation." The court may impose upon a party any of the following conditions: 1) an obligation to indemnify and hold the other party harmless from certain taxes, reassessments, interest, penalties, the termination of a probate homestead, loss of rights to a probate family allowance, loss of rights to pension benefits, elections or survivors' benefits, or loss of rights to social security benefits, and 2) an obligation to maintain existing health and medical insurance coverage for the other party and dependent minor children. Prior to entry of judgment terminating the status of the marriage, the party's retirement or pension plan should be joined as a party or if applicable, a qualified domestic relations order, or QUADRO, shall be entered with reference to a defined benefit or similar plan. The judgment shall expressly reserve jurisdiction for later determination of all other pending issues. (Fam. Code, § 2337.)

**There is sometimes a simpler way to obtain a dissolution. It is called a "summary dissolution."** A "summary dissolution" makes it unnecessary to appear in court, to serve a summons, or to file an interlocutory judgment. This procedure may be used only if **all** of the following circumstances exist:

- Either husband or wife has lived in California for six months and in the county in which the proceeding is filed for three months before filing the petition.
- Irreconcilable differences have caused the irremediable breakdown of the marriage and the marriage should be dissolved.
- There are no children of the parties (either born or adopted before or during the marriage) and the wife, to her knowledge, is not pregnant.
- The duration of the marriage is not more than five years at the time of the filing of the dissolution petition.
- There are no real property interests at the time of the dissolution. (A residential lease, occupied by either party, that will terminate within a year of filing the divorce petition, and that does not include an option to purchase the residence, is not considered a real property interest for this purpose.)
- Community debts incurred by either or both parties after the date of their marriage do not exceed a certain amount (not including automobile debts).
- The total fair market value of the community property is less than a certain amount, adjusted for inflation (not including debts and automobiles).
- Neither spouse has more than a certain amount of separate property (not including debts and automobiles).
- The parties have made a property settlement agreement and have executed (signed) the documents necessary to carry out the

- agreement.
- Both parties give up any rights to spousal support.
- Both parties, upon entry of final judgment, give up any rights to appeal or to move for a new trial unless fraud, duress, accident, or mistake is involved. (Fam. Code, § 2405.)
- Both parties have read the summary dissolution brochure which is provided by the court in both English and Spanish, and explains the procedures, and gives advice about the possibility of conciliation and about consultation with an attorney. (Fam. Code, § 2406.)
- Both parties want the court to dissolve their marriage.

**If all of the above requirements are met, the parties may file a joint petition** (signed under oath by both husband and wife) for summary dissolution. If you would like the court to issue an order that restores your maiden name<sup>96/</sup>, you may so state on the joint petition for summary dissolution. (Fam. Code, §§ 2400-2401; 2080-2082.) Six months after the filing of such a joint petition, the court may issue a final judgment dissolving the marriage. (Fam. Code, § 2403.)

**Either party has the right to revoke the petition for summary dissolution** at any time before a request for final judgment is made. You will remain married until one of you files for and obtains a final judgment of dissolution. If either of you revokes the petition for summary dissolution before the final judgment is entered, the dissolution process will be terminated until a new petition is filed. (Fam. Code, § 2402.)

**A divorce obtained in another jurisdiction shall not be valid in California** if both parties were domiciled here at the time the proceeding for divorce was commenced. (Fam. Code, § 2091.)

## **Division of Assets**

**California has community property laws.** This means that generally one-half of all community property belongs to you and one half belongs to your spouse when you divorce. Community property generally includes both of your earnings or anything you purchased with or saved from your earnings while you were married and living together. (Fam. Code, §§ 2550, 760 and 803.)

**The valuation date for assets will usually be set by a court** as near as practicable to the time of trial, unless, upon notice to the other party and for good cause shown,

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96. It is against the law for anyone engaged in a trade or business to discriminate against you solely because you have chosen to use your maiden name. (Code of Civ. Proc., § 1279.6.)

the court picks another date after separation and before trial in order to accomplish an equal division in an equitable manner. (Fam. Code, § 2552.)

**The court may award a community asset to one party** in order to effect a substantially equal division between the parties or in certain other circumstances. (Fam. Code, §§ 2601, 2603 and 2604.)

**When you get a dissolution, you and your spouse each keep the separate property you own.** Separate property includes real estate, money, furniture, or any other belongings that you or your spouse owned before marriage. It also includes certain gifts and inheritances you received before or during marriage. Separate property held in joint tenancy may be subject to the court's jurisdiction. (Fam. Code, §§ 770 and 2581.) A spouse is not entitled to reimbursement for contributions of separate property to the marital community that were made before 1984. (*In re Marriage of Heikes* (1995) 10 Cal.4th 1211.)

**There can be many complications in deciding whether your possessions are separate or community property.** A lawyer may help you resolve these questions and arrive at a proper settlement.

**It is possible to alter the property rights of husband and wife by premarital or marital property agreement.** (Fam. Code, §§ 721 and 1600 et seq.) If you had such an agreement, division of assets will normally be pursuant to that agreement. In transactions between themselves, spouses generally are obligated to use good faith and fair dealing, to provide each other with access to any relevant information and to provide an accounting of benefits and profits.

**Community property money used for the education, training or repayment of education-related loans of one spouse, even while residents of other states, must ordinarily be repaid to the community property before a settlement of community property, if the contributions substantially enhanced the earning capacity of that spouse and if there is no express written agreement of the parties to the contrary.** (Fam. Code, § 2641.) There is a rebuttable presumption that the community has not substantially benefitted from community contributions to the education and training made less than 10 years before the commencement of the proceeding and that it has substantially benefitted from such contributions made more than 10 years before the commencement of the proceedings. The reimbursement obligation can be modified if the education or training received by one party is offset by that received by the other, or if one party's need for support is reduced by the education and training received.

## **Division of Debts**

**Any debts incurred before or during the marriage for the education or training of one spouse will be considered to be that spouse's separate property debt upon dissolution of the marriage.** (Fam. Code, § 2641(b)(2).)

**Except for education or training-related debts, debts that either you or your spouse acquired during marriage are community property debts.** This includes credit card bills, even if the card is in your name only. Community property debts are divided equally, and usually valued as close to the separation date as possible, unless you and your spouse agree to an unequal division, or upon notice to the other party and for good cause shown, the court picks another date after separation and before trial in order to accomplish an equal division in an equitable manner. (Fam. Code, §§ 2551-2552 and 2620-2627.) To the extent community debts exceed total community and quasi-community assets, the excess of debt shall be assigned as the court deems equitable, taking into account factors such as the parties' relative ability to pay. (Fam. Code, § 2622.)

**Money you owed before getting married is your separate property debt.** Each of you is responsible for paying your separate property debts. (Fam. Code, § 2625.) Debts incurred by either spouse after the date of separation but before entry of judgment of dissolution of marriage or legal separation of the parties are treated as follows: 1) debts incurred for the common necessities of life of either spouse or of children of the marriage for whom support may be ordered, in the absence of court order or written agreement, shall be confirmed to either spouse according to their needs and abilities to pay at the time the debt was incurred; 2) debt incurred by either spouse for nonnecessaries are considered separate debts. (Fam. Code, § 2623.) Debts incurred by either spouse after entry of a judgment of dissolution of marriage but before termination of the marital status or after entry of a judgment of legal separation shall be separate debts. (Fam. Code, § 2624.)

**You and your spouse may own more community property than you realize.** Many married couples own a home, furniture, appliances, and a car as community property. You and your spouse also may have cash in checking and savings accounts, stocks and bonds, pension and profit-sharing plans, life insurance policies, tax refunds, a vacation home, rental property, or a business--all of which can be community property. Even though each spouse usually keeps his or her clothing and jewelry, these belongings may also be community property.

**Your lawyer can help you make sure that all belongings are properly listed as either community or separate property.** For example, your lawyer can explain any rights you may have to your spouse's pension or profit-sharing plan, or retirement

or other employee benefits. (Fam. Code, § 2610.)<sup>97/</sup> (You are not entitled to a share of your spouse's Social Security payments; see *In re Marriage of Nizenkoff* (1976) 65 Cal.App.3d 136.)<sup>98/</sup> Your lawyer also can tell you whether money you or your spouse receive from a personal injury lawsuit or workers' compensation claim qualifies as community or separate property. (Fam. Code, §§ 780, 781 and 2603; *Bd. of Pension Commissioner v. Superior Court (Corriveau)* (1986) 183 Cal.App.3d 1012.)

**You and your spouse can decide how to divide your community property debts and assets.** You can divide them any way you like, even if the division is not equal. If you have incurred debts with your spouse and your spouse has agreed to assume those debts upon dissolution, that agreement is not binding upon creditors, and you may be called upon to pay.

**Division of assets and debts can be a complicated process,** and each of you may want a lawyer's advice. You also might want to save money by having one mediator-lawyer, especially if you and your spouse agree on matters of property division, support, and custody. However, it is still best that you retain separate counsel to review the final agreement.

**If you and your spouse cannot agree, the court must decide how to divide your possessions.** If a judge believes that the value of your community property is no more than a certain amount, or if he/she believes the parties are unable to agree on a division of the property, you may have to submit issues of the character, value and division of the community estate to arbitration. (Fam. Code, § 2554.) If you do not agree with the arbitrator's decision, you can then go to court. (Fam. Code, § 2555.) Unless there are unusual circumstances, your belongings will be divided evenly. However, the court might not split the ownership of each of your belongings between you and your spouse; instead, it might give each of you things of equal value. For example, if your spouse gets the furniture and appliances, you

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97. For example, the United States Supreme Court in a recent opinion ruled that the Employee Retirement Income Security Act of 1974 preempts state community property laws that allow a nonparticipant spouse to bequeath to her children an interest in undistributed pension plan benefits. (*Boggs v. Boggs* (1997) \_\_U.S.\_\_, 117 S.Ct. 1754.) A Court of Appeal recently ruled that an ex-wife was entitled to a community property interest in the enhanced portion of her ex-husband's voluntary retirement incentive benefits. (*In re Marriage of Lehman* (1997) 55 Cal.App.4th 693, review granted, August 20, 1997; but see contra, *In re Marriage of Frahm* (1996) 45 Cal.App.4th 536 and *In re Marriage of Oddino* (1997) 16 Cal.4th 67 (a retirement plan may not be ordered to pay early retirement benefits to an ex-wife while her former husband is still working).)

98. However, if you were married for at least ten years and the Social Security benefits you are entitled to are less than half of your ex-spouse's, you may receive an increase in your own Social Security benefits. (42 U.S.C. §§ 402(b) and 416(d).)

might get the family car, or something else of equal value.

**Often, your house is the most valuable community property you and your spouse own.** All your other possessions added together may not equal the value of your house. If you and your spouse cannot agree on what you do with your house, the court will make the decision. The court might say the house should be sold and the profit and any capital gains tax liability be divided equally between you and your spouse. If you have young children, the court might say that the spouse who has custody can live in the house and that the house should be sold at a later date. This is known as a "deferred sale of the home order." (Fam. Code, § 3800 et seq.) The deferred sale order may be modified if the spouse living in the house remarries or there are other changed circumstances. (Fam. Code, § 3808.) Ask your lawyer to explain other ways that you and your spouse or the court might settle the issue of what to do with your home.

**Once the court approves the property settlement** that you and your spouse agree to, you cannot make changes unless both spouses agree in writing and the court approves.

**A military pension may be considered community property.** Under federal law, a court may treat federal pension rights, including military pension rights, either as the sole property of the pension member, or in accordance with state law that treats pension rights as the community property of both the pension member and the spouse. (10 U.S.C. § 1408.) California law treats military pensions as community property. (Fam. Code, § 2610.) However, state courts cannot treat military retirement pay that has been waived by a veteran in order to receive veteran's disability benefits as community property. (*Mansell v. Mansell* (1989) 490 U.S. 581, 583.)

**You can protect your share of the community property and your right to child custody and/or visitation while your divorce is pending.** Whenever a summons is issued in a dissolution action, the summons contains an automatic temporary restraining order (ATRO; see Fam. Code, §§ 231-235, 2040 and 2340.) These restraining orders are effective against both a husband and wife until the petition for dissolution is dismissed, a judgment is entered, or the court makes further orders. The orders are enforceable anywhere in California by any law enforcement officer who has received or seen a copy of them. The restrained acts include a prohibition from removing minor children from the state; from disposing, concealing or transferring any property; and from making any extraordinary expenditures without notification. These restraining orders are issued without any showing of good cause, without any determination by a judge, and without any application by a party.



**The court may also determine, upon application of either party, which spouse will temporarily use and control the property** that you and your spouse have accumulated. (Fam. Code, §§ 2045, 6324 and 6325.)

## **Spousal Support/Alimony**

"Spousal support" is the legal name for alimony. Spousal support is money paid by one spouse to another for the recipient's support after they have divorced or legally separated. Spousal support can be awarded at any time, for different lengths of time, to either the husband or the wife. Spousal support can be combined with child support and termed "family support." (Fam. Code, §§, 3650 and 4066.) If combined as family support, the entire amount of support may be treated for tax purposes like spousal support, depending on the circumstances. (See Int. Rev. Code, 26 U.S.C. § 71(b); Wells v. Commissioner (1998) 75 T.C.M. (CCH) 1507.) One should consult his or her tax advisor and/or attorney in order to determine the tax consequences of any award of spousal support or alimony.

### **You and your spouse can decide if one of you should receive spousal support.**

If you and your spouse cannot agree about alimony, the court will decide. The court will decide whether spousal support should be paid, who will pay it, how much it will be and how long it will last. But the court does not order spousal support in all cases. (Fam. Code, § 2010.)

**You can receive spousal support while you are waiting for your divorce to become finalized.** Once you file a petition to dissolve your marriage, your most urgent needs may be for financial support for you and your children, especially if you are not working outside the home and have relied entirely on your husband's earnings for income. If your husband has a job and you do not work outside the home, the court will usually order your husband to pay for temporary support. The court in arriving at an amount to award in temporary support will try to maintain the status quo in both new households or to equalize the standard of living in both households. (Fam. Code, §§ 3600, 3601 and 3603.)

**For purposes of permanent support,** the amount you receive will be based on your needs, your children's needs, and your spouse's earnings. According to Family Code section 4330, the court may order a party to pay for the support of the other party an amount, for a period of time, that the court determines is just and

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99. This paragraph amended April 2005.

reasonable, based on the standard of living established during the marriage, taking into consideration the following circumstances set forth in Family Code section 4320:

- 1) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:
  - a. The marketable skills of the supported party;<sup>100/</sup> the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.
  - b. The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.
- 2) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.
- 3) The ability of the supporting party to pay, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.
- 4) The needs of each party based on the standard of living established during the marriage.
- 5) The obligations and assets, including the separate property, of each party.
- 6) The duration of the marriage.
- 7) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.
- 8) The age and health of the parties.
- 9) The immediate and specific tax consequences to each party.
- 10) The balance of the hardships to each party.
- 11) The goal that the supported party shall be self-supporting within a reasonable period of time. A "reasonable period of time" for purposes of this section generally shall be one-half the length of the marriage.

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100. The court may order a party to submit to an examination by a vocational training counselor. (Fam. Code, § 4331.) Family Code section 3558 also allows the court, in a proceeding involving child or family support, to require either party to attend job training, job placement and vocational rehabilitation, and work programs at regular intervals and times and for durations specified by the court.

(However, the court has discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section and the circumstances of the parties.)

- 12) Any other factors the court determines are just and equitable.

**Family Code section 2105 imposes a duty on each spouse to serve upon the other Preliminary and Final Declarations of Disclosure** concerning assets and liabilities, earnings, accumulations and expenses, and a current Income and Expense Declaration.<sup>101/</sup> You may be required to submit copies of your state and federal income tax returns to your spouse's counsel during the course of the litigation over spousal and/or child support. (Fam. Code, § 3552.) The court may order the supporting party to give reasonable security for the payment of spousal support. (Fam. Code, § 4339.)

**Perhaps neither of you needs spousal support when your marriage is dissolved.** But needs can change. One spouse might have a long and expensive illness. Or the business of one spouse might fail. Anticipating such problems, your lawyer may advise you to ask the court to "keep the door open" for a certain period of time. You will then be able to ask the court for spousal support in case your needs change during that period. As long as you are entitled to spousal support, and if you did not agree that the amount or duration of support would be nonmodifiable, you can go back to court and ask the judge to increase or lower the amount whenever there is good reason. (Fam. Code, § 3651.) Courts have shown a willingness to interpret marital settlement agreements in favor of the right to spousal support, even in the face of conflicting language in the agreement. (*In re Marriage of Vomacka* (1984) 36 Cal.3d 459; *In re Marriage of Brown* (1995) 35 Cal.App.4th 785.)

**You can lose most of your financial support from your ex-spouse if you have been cohabiting with someone else of the opposite sex and therefore need less money, unless otherwise agreed to by the parties in writing.** The court may reduce your support until there is a change in your economic circumstances and you need support again. However, absent extraordinary circumstances, the income of the supporting spouse's subsequent spouse or nonmarital partner shall not be considered when determining or modifying spousal support. (Fam. Code, §§ 4057.5

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101. In a recent opinion, the Court of Appeal set aside a judgment for dissolution of a marriage because the parties impermissibly purported to waive these mandatory statutory requirements without following the waiver procedures set forth in Family Code section 2105. (*In re Marriage of Fell* (1997) 55 Cal.App.4th 1058.)

and 4323.)<sup>102/</sup>

**Unless otherwise agreed to in writing, spousal support will cease upon the death of either party, or upon the remarriage of the spouse who had been receiving the support.** (Fam. Code, § 4337.) According to Family Code section 4330(b), the court is required to tell the parties to a divorce that it is the goal of the state that each party shall make reasonable good faith efforts to become self-supporting, and that failure to make such efforts may be one of the factors considered by the court as a basis for modifying or terminating support.

**If you have to go to court to obtain spousal (or child) support, you may be entitled to attorney's fees and costs.** (Fam. Code, § 270 et seq.) A spouse can encumber his/her interest in the community real property in order to retain or maintain legal counsel for purposes of a marital dissolution. (Fam. Code, § 2033.) A court can award attorney's fees, where just and reasonable under the relative circumstances of the parties. Attorney's fees shall be payable from any type of property, whether community or separate. (Fam. Code, § 2032.) A judgment for spousal support, family support (or child support), including all interests and penalties, does not need to be renewed but is enforceable until paid in full. (Code Civ. Proc., § 683.13.)

## **Child Custody and Support**

### **Child Custody**

**Subject to court approval, you and your spouse can decide with whom the children will live.** If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider the wishes of the child in making an order granting or modifying custody. (Fam. Code, § 3042.) There are two possible types of custody by parents--"joint custody" or "sole

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102. However, two 1996 Court of Appeal cases indicated that a remarried spouse could use his new spouse's income to determine his tax liability pursuant to Family Code section 4059 in order to determine his real net disposable income for purposes of calculating the child support he owed. In effect, the decisions required the nonremarried parent to pay a portion of the remarried parent's tax liability and to suffer a loss of spendable income in her household. (*In re Marriage of Carlsen* (1996) 50 Cal.App.4th 212 and *County of Tulare v. Campbell* (1996) 50 Cal.App.4th 847.)

custody." No matter which parent the children live with, each parent ordinarily continues to have a responsibility to his/her children.

**The Legislature has declared it the public policy of this state to assure that minor children have frequent and continuing contact with both parents** after the parents have separated or dissolved their marriage, and to encourage parents to share the rights and responsibilities of child-raising. (Fam. Code, § 3020.)<sup>103/</sup>

**If you and your spouse cannot agree on custody**, custody is granted in the following order of preference, according to the best interests of the child (i.e., the child's health, safety and welfare; the nature and amount of contact with both parents; any history of abuse by a parent or potential custodian against certain other people;<sup>104/</sup> and any history of habitual or continual illegal use of controlled substances or alcohol by either parent (Fam. Code, § 3011):

- 1) to both parents jointly, or to either parent (the court shall consider which parent is more likely to allow frequent and continuing contact with the noncustodial parent);
- 2) to the person or persons in whose home the child has been living in a wholesome and stable environment; or
- 3) to any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child; the court will give due weight to the nomination of a guardian by the parent.

**Family Code section 3151 sets forth the duties of appointed counsel for a child in a custody or visitation proceeding.**

**There is no preference or presumption for or against joint legal custody, joint**

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103. Assembly Bill No. 200 (1997-1998 Reg. Sess.), effective January 1, 1998, provide that there is a presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child. (Fam. Code, §§ 3011 and 3020.) This bill also declares that it is the policy of the state that the health, safety and welfare of children shall be the court's primary concern, rather than shared custody, in determining the best interest of children when making orders regarding custody or visitation.

104. Family Code section 3027 authorizes a court to impose monetary sanctions, including all costs incurred as a result of defending against an accusation of abuse, plus reasonable attorney's fees, against a person who knowingly makes false accusations of child abuse or neglect during child custody proceedings. The California Supreme Court recently ruled that even if a child is not competent to testify in court, his/her statements to others regarding sexual abuse can be used in a child custody case if the circumstances indicate that the statements are reliable and the accusations of molestation are supported by independence evidence. (*Cindy L. v. Edgar L.* (1997) 17 Cal.4th 15.)

physical custody, or sole custody. (Fam. Code, §§ 3040 and 3043.) However, when a request for joint custody is granted or denied, the court, upon request, shall state in its decision the specific reasons for granting or denying the request. (Fam. Code, § 3082.)

**Sole legal custody means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of the child.** (Fam. Code, § 3006.)

**Sole physical custody means a child shall reside with and be under the supervision of one parent.** (Fam. Code, § 3007.) The parent who does not have sole physical or legal custody has a right to access to records and information pertaining to the child (Fam. Code, § 3025), and usually has "reasonable visitation" rights (in other words, he/she can see the children at certain times and places that both parents agree on), unless the visitation would be detrimental to the best interests of the child. (In the latter situation, the court may limit visitation to situations in which a third person, specified by the court, is present.) If the parents cannot agree, the court will set up a visitation schedule. Reasonable visitation rights may also be granted to any other person having an interest in the welfare of the child, including stepparents, close relatives where the parent of an unemancipated minor is deceased, or grandparents. (Fam. Code, §§ 3100-3104.)

**Joint custody means that both parents are involved in making decisions about the children, such as where the children will go to school and where they will live.** (Fam. Code, § 3002.) Joint physical custody means that both parents have significant periods of physical custody (Fam. Code, § 3002), and joint legal custody means that parents share the right and responsibility to make significant decisions relating to the children's health, education and welfare. (Fam. Code, § 3003.) For example, the children might spend six months a year with each parent, or the children might spend more time with one parent than with the other.

**In making an order of joint physical or joint legal custody, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child.** (Fam. Code, § 3086.)

**In making an order for custody, the court may specify that a parent shall give 45 days notice to the other parent if the parent plans to change the residence of the child for more than 30 days, unless there is prior written agreement.** (Fam. Code, § 3024.)

## **Changing Residency as it Affects Child Custody**

**The California Supreme Court recently decided the case of *Burgess v. Burgess* (1996) 13 Cal.4th 25**, in which it ruled that parents with sole physical custody have the right to relocate with minor children without having to prove that the move is a necessity. The court said that custodial parents do not bear the burden of proof in such situations, and that trial judges should intervene to change custody only when the rights or welfare of the children are prejudiced.

**Wendy Burgess was allowed to move with her children 40 miles away** because her reason for moving was job-related, and not for the purpose of frustrating Paul Burgess' visitation rights; the children would benefit by a reduction in her commute time; and Paul Burgess would still be able to visit his children regularly and often. The court noted that it was unrealistic to assume that divorced parents would remain in the same location, given that economic necessity and remarriage accounted for the bulk of relocations. In a footnote, the court said that in cases where parents share joint physical custody, there is no presumption favoring moveaways, and that the trial judge should make a new determination of what is in the best interests of the child.<sup>105/</sup>

**An order for joint custody can be modified or terminated if in the best interests of the child.** (Fam. Code, § 3087.)

**The court may decide to give custody to neither parent, but to a third party, without the consent of the parents.** However, the court can only award custody to a third person if it finds that award of custody to either parent would be detrimental to the child and that the award of custody to a third party is required to serve the best interests of the child. (Fam. Code, § 3041.)

**If there are issues besides child custody, the court will separate out the child custody issue and hear it before the other issues.** (Fam. Code, § 4003.)

**Courts must have mediation proceedings to help resolve custody and visitation disputes.**<sup>106/</sup> In order to reduce or eliminate courtroom battles over child custody

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105. In response to that instruction, a Court of Appeal held in *Brody v. Kroll* (1996) 45 Cal.App.4th 1732, that where the parties had actual joint physical custody of a child, a family law court should reconsider the basic custody arrangement where one of the parents moves away from the area.

106. Family Code section 3190 permits the court to require parents and children involved in a custody or visitation dispute to participate in outpatient counselling, and to allocate the cost of such counselling.

and visitation rights, parties must go to a court-appointed mediator before any hearing involving a dispute concerning custody of or visitation with their children. The counselors will try to help you and your spouse settle your differences and may make a recommendation to the court on a way to handle custody and visitation. (See Fam. Code, § 1810 et seq. for operation of family conciliation courts; some counties offer other services that can help you and your spouse get back together, adjust to the dissolution, or settle disputes over other issues besides custody and visitation.)

**The custody agreements you originally agreed to can be changed.** If you later decide the custody arrangements you agreed to are not in the best interests of our children, you can, with or without an attorney, apply to the superior court in your county to change any child custody or visitation arrangements previously agreed upon. Modifications of these previous arrangements can be made through the mediator in certain counties without formal court hearings. The agreements reached by the parties may be formalized by the judge of the superior court. If this mediation fails, you still have the right to petition the superior court for a formal court hearing. (Fam. Code, §§ 3089, 3160-3164, 3173, 3175-3186.)

**If you believe your spouse will not appear at the child custody hearing with your children, you can get help from the district attorney.** If your children are in your spouse's physical possession and their whereabouts are unknown to you, you may ask the district attorney to locate your spouse and compel him/her to appear at the custody proceeding with your children. Your spouse may do the same if you have physical possession of the children and there is reason to believe you will not appear. (Fam. Code, §§ 3130-3134.5, and 3140.)

**If your spouse kidnaps your children, you are entitled to get help from the district attorney.** If you have been awarded sole custody of your children and your spouse takes the children from you in violation of a custody order, you can ask the district attorney to take all actions necessary to locate your children and to enforce the custody order. A peace officer is authorized to take a child into protective custody if it appears that someone will conceal the child to evade the authority of the court, there is no lawful custodian available to take custody of the child, there are conflicting custody orders or claims regarding the child, or the child is an abducted child. (Fam. Code, §§ 3134.5, 3411, and 6240 et seq.) A parent deprived of joint physical custody of a child can also make use of laws for the relief of child-snatching and kidnapping. (Fam. Code, § 3084.) Child abduction is punishable by up to a maximum jail or prison term of four years, a fine of not more than \$10,000, or both. ( Pen. Code, § 277 et seq.; see further discussion in Violence Against Women and Children portion of this handbook.) If a person has wrongfully taken a child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction in a case brought by that person for purposes of



adjudicating custody. (Fam. Code, § 3408.)

**The court may order financial compensation for periods when a parent fails to assume caretaker responsibility**, or when a parent has been thwarted when attempting to exercise custody or visitation rights contemplated by a custody or visitation order or agreement between the parents. (Fam. Code, § 3028.)

**Family Code section 3400 et seq. contains the Uniform Child Custody Jurisdiction Act, or UCCJA.** The purposes of this act are to:

- 1) avoid jurisdiction competition and conflict with courts of other states in matters of child custody that have in the past resulted in shifting of children from state to state with harmful effects on their well-being;
- 2) promote cooperation with the courts of other states so that a custody decree is rendered in that state which can best decide the case in the interests of the child;
- 3) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and the child's family have the closest connection, and where significant evidence concerning the child's care, protection, training, and personal relationships is most readily available, and the courts of this state decline the exercise of jurisdiction when the child and the child's family have a closer connection with another state;
- 4) discourage continuing controversies over child custody, in the interest of greater stability of home environment, and of secure family relationships for the child;
- 5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;
- 6) avoid relitigation of custody decisions of other states in this state insofar as feasible;
- 7) facilitate the enforcement of custody decrees of other states; and
- 8) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

**This uniform act provides a method of determining subject matter jurisdiction in child custody cases in California.** The act applies to juvenile dependency proceedings and actions to terminate parental rights. The Federal Parental Kidnapping Act should also be consulted. (28 U.S.C. § 1738A.)

**The policies of the UCCJA also apply to international custody disputes.** (*In re Stephanie M.* (1994) 7 Cal.4th 295.) However, international child custody disputes would be affected by the Hague Conventions, of which the United States is a

signatory. These provide that the place of the child's habitual residence should be taken into account in determining custody of the child. (See *Huynh Thi Anh v. Leui* (1978) 586 F.2d 625, 630.)

## Child Support

**If you were married and the marriage dissolved, you and your spouse can work out a child support plan, but the court must approve the amount to be paid.** You are entitled to request current income and expense declarations from your spouse. (Fam. Code, § 3664 et seq.) If you cannot agree, the court will decide whether you should receive child support payments and how much they should be.<sup>107/</sup> (If your spouse has custody of your child, you could be ordered to pay child support.) Among other things, the court will consider your children's best interests. It will also consider whether you or your spouse are supporting other people, such as children from a previous marriage. (Fam. Code, § 4001 et seq.) The court will also consider the medical insurance coverage available to everyone involved. (Fam. Code, §§ 4006 et seq.) Payment of child support is to be made before payment of any debts owed to creditors. (Fam. Code, § 4011.) Upon a showing of good cause, a court may order a parent required to make a payment of child support to give reasonable security for the payment (Fam. Code, § 4102) and may require the payment of a "child support security deposit" of up to one year's child support. (Fam. Code, § 4560 et seq.)

**Since January 1993 there have been statewide uniform guidelines** for the payment of child support. (Fam. Code, § 4050 et seq.)<sup>108/</sup> These were implemented in compliance with the federal Family Support Act of 1988. (42 U.S.C. § 602 et seq.) The guidelines take into account each parent's actual income<sup>109/</sup> and responsibility

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107. The court is authorized to provide support for children born after the filing of the initial petition or final decree of dissolution. (Fam. Code, § 2010.) It can also issue expedited child support orders. (Fam. Code, § 3620 et seq.)

108. Under certain circumstances, the parties may stipulate to or the court may order payments below the guidelines' formula amount. (Fam. Code, § 4065.) A court may depart from the guidelines if it specifies, either in writing or on the record, three things: the guideline amount, the reason why the amount ordered differs, and the reason the different amount is consistent with the best interests of the child. (Fam. Code, § 4056.) Guidelines can be departed from if the parent ordered to pay support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children, or where application of the formula would be unjust or inappropriate due to special circumstances. (Fam. Code, § 4057(b)(3).)

109. Child support received by a party for children from another relationship shall not be included as part of that party's gross or net income. Spousal support actually received from a person not a party to the proceeding to establish a child support order is considered to be income. (Fam. Code, § 4058.)

for the children, and seek to minimize significant disparities in children's living standards between two homes. (Fam. Code, § 4053.) The income of the subsequent spouse or nonmarital partner of the parent obligated to pay child support, or of the person receiving the child support shall not be considered in determining or modifying the support, except where excluding the income would lead to extreme and severe hardship to the child subject to the child support award, in which case the court shall also consider whether including that income would lead to extreme and severe hardship to any child supported by the obligor, or by the obligor's subsequent spouse or nonmarital partner. If any portion of the income of either parent's subsequent spouse or nonmarital partner is allowed to be considered, the court shall allow a hardship deduction based on the minimum living expenses for one or more stepchildren of the party subject to the order. An extraordinary case includes a parent who voluntarily or intentionally quits work or reduces income, or who intentionally remains unemployed or underemployed and relies on a subsequent spouse's income. (Fam. Code, § 4057.5.)

**Family Code section 4058(b) allows a court, in its discretion, to consider the earning capacity of the parent in lieu of the parent's income, where this is in the best interests of the child.** It is not necessary that the parent unreasonably failed to seek or accept employment opportunities, according to the recently decided case of *In re Marriage of Hinman* (1997) 55 Cal.App.4th 988. (However, this opinion cites other Court of Appeal cases to the contrary.)<sup>110/</sup>

**Additional child support may be ordered** to cover such items as child care costs, uninsured health care costs, costs related to educational or other special needs of the children, and travel expenses for visitation. (Fam. Code, § 4062.) The court may adjust the child support order as appropriate to accommodate the seasonal or fluctuating income of either parent. (Fam. Code, § 4064.) A party can bring an action in court to enforce the other parent's duty to pay child support. (Fam. Code, § 4000.)

**Usually, child support payments are made until your children who are not self-supporting complete the 12th grade or attain the age of 19, whichever occurs first** (Fam. Code, § 4007), unless there is a written agreement about subsequent payments for education, etc. However, if you have a child under 19 who gets married or becomes "emancipated" or self-supporting, the child support payments can be stopped. (Fam. Code, §§ 3900 and 3901.)

**Unlike spousal support, the child support money you receive is not taxable.** If one

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110. A recent Court of Appeal decision, *Marriage of LaBass* (1997) 56 Cal.App.4th 1331, reduced a father's child-support obligation because the mother with custody of the children refused to work full-time to contribute to the support of their children.

spouse pays more than half the cost of supporting a child, he/she can usually claim the child as a tax exemption. The two of you can agree who gets the tax exemption. (Rev. & Tax. Code, § 17054; 26 U.S.C. § 152.)

**With certain exceptions, a child support order can be modified or terminated.**

(Fam. Code, §§ 3651, 3653, 3680 and 4010.) An order modifying or terminating a child support order may include the payment of costs and attorneys' fees, except as against a government agency. (Fam. Code, § 3652.)

**You can obtain a court order that your spouse be required to provide health insurance coverage to supported children if that insurance is available at no or at a reasonable cost to the parent.**

(Fam. Code, § 3751.) The cost of coverage is generally considered to be reasonable if it is employment-related group health insurance, or other group health insurance. There is a rebuttable presumption that such cost is reasonable to the parent, although the actual cost will be examined in determining reasonableness. The court is required to advise each parent of his/her rights and obligations in this respect. (Fam. Code, § 4062 et seq.)<sup>111/</sup> The court may, except for good cause shown, also order a health insurance coverage assignment by the employer.

**Effective January 1, 1994**, when the court orders a party to pay support, its order should include an earnings assignment order directing the employer to pay a specified amount to the person owed child support. Earnings subject to such an order once the support is one month overdue include wages, payments due for services of independent contractors, dividends, rents, royalties, patent rights, natural resource rights, payments or credits due as a result of written or oral contracts for services or sale, and payments due for worker's compensation and temporary disability benefits. (Fam. Code, §§ 5206.) Family Code section 4508 authorizes every child support order, with specified exceptions, to require the obligor to designate an account for paying child support by electronic funds transfer. This section also authorizes the support order to require the obligor to deposit funds in an interest-bearing account in a bank, savings and loan or credit union if the obligor has an account there.

**The obligor parent has a duty to notify the obligee parent** of a change of employer name, address, and telephone number within 10 days of obtaining new

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111. Group health care service plans and group disability insurance or self-insured employee welfare plans which provide hospital, medical, or surgical expense benefits for employees or subscribers and their dependents, are prohibited from excluding coverage of a dependent child solely on the basis that he/she does not reside with the insured or plan member, unless the child lives outside the health care service plan geographical area and the law does not otherwise require it. (Health & Saf. Code, § 1374.57 and Ins. Code, § 10121.6.)

employment. (Fam. Code, § 5281.) Each parent, after entry of a child support order or judgment of paternity, must also file with the court their residential and mailing addresses, social security numbers, and telephone and driver's license numbers. (Fam. Code, § 4014.) The employer also has an obligation to notify the obligee parent when the obligor parent leaves its employment. (Fam. Code, § 5281) A state employee may authorize automatic payroll deduction to pay for child support payments. (Gov. Code, § 1151.5.) Support payments can also be paid from unemployment benefits if the creditor seeks an earnings assignment order,<sup>112/</sup> either directly or through the appropriate district attorney. (Code Civ. Proc., § 704.120; Unemp. Ins. Code, § 1255.7.) Welfare and Institutions Code, section 11350.5, sets forth procedures for withholding unemployment compensation and unemployment compensation disability benefits. Welfare and Institutions Code section 11357 requires the Public Employee Retirement System (PERS) to withhold amounts certified as overdue support from retirement benefits and refunds.

**Government Code section 12419.5** allows the State Controller to deduct from income tax refunds amounts owed to a state agency for child support payments. Code of Civil Procedure section 708.30 sets forth a procedure for parents owed child support to file money judgments or abstracts of such judgments with the public entities that owe money to a parent who is 90 days overdue in paying child support, such as the State Franchise Tax Board or the State Lottery.<sup>113/</sup>

**Welfare and Institutions Code section 11350.6 prohibits state professional or business licensing agencies from issuing or renewing a license** to a licensee who is not in compliance with a support order or judgment, and whose name is on a certified noncompliance list provided by the Department of Social Services. The department may also request that licenses of obligors who have been out of compliance for more than four months be suspended. (See also Bus. & Prof. Code, § 490.5; Veh. Code, § 15310.) These provisions also apply to appointments and

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112. The procedures for obtaining an earnings assignment order for payments or credits due the spouse who owes child support are set forth at Family Code, section 5200, et seq. The Legislature set up a statutory scheme, effective January 1, 1994, to provide an extraordinary remedy for cases of bad faith failure to pay child support obligations. (Fam. Code, § 4600 et seq.) Where the court has ordered either or both parents to pay any amount for the support of a child for whom support may be ordered, where the parent is 60 days behind in payments, the court can order him/her to deposit assets worth up to one year's child support or \$6,000, whichever is less, or a performance bond in that amount, to secure future support payments with a district attorney, county officer or trustee designated by the court. (Fam. Code, §§ 4601, 4610, 4614 and 4615.) Certain defenses can be raised to such a proceeding, such as illness or unemployment. (Fam. Code, § 4612.)

113. The above-mentioned options are also available for enforcing spousal support obligations. Both Unemployment Insurance Code section 1255.7 and Welfare and Institutions Code section 11350.5 provide that "related spousal support obligations" can only be collected to the extent allowed under federal law. (See 42 U.S.C. § 654 et seq.)

commissions by the Secretary of State, such as to the office of a notary public, and to drivers' licenses issued by the Department of Motor Vehicles. (Temporary licenses may be granted under certain circumstances.)

**Section 19721.6 of the Revenue and Taxation Code requires the Franchise Tax Board**, through a cooperative agreement with the State Department of Social Services, and in cooperation with certain financial institutions, to operate a Financial Institution Match System to provide certain information for each noncustodial parent who maintains an account at the institution. (See also Assembly Bill No. 247 (1997-1998 Reg. Sess.), that requires the state to pay for the cost of the Franchise Tax Board's child support program, requires the Board to provide district attorneys with social security numbers on request and requires them to accept cases even if the obligor owes back taxes.)

**Welfare and Institutions Code section 16575, et seq., established the Statewide Automated Child Support System to provide a statewide registry of all child support orders in California.** Newly enacted Welfare and Institutions Code section 11475.4 requires the state, by October 1, 1998, to operate a Child Support Centralized Collection and Distribution Unit (CSCCDU), in compliance with federal law.

**If your ex-spouse does not pay support to you or your children** as was ordered by the court, you may contact one of the following for immediate help:

- County district attorney's office, Family Support Division. The district attorney can assist you in obtaining court orders to deduct child support from various monies received by your ex-spouse and can charge your spouse with a "misdemeanor," for willful omission, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance to his/her child. This is a criminal offense with penalties of up to \$2,000 in fines or a one-year jail sentence, or both. (Pen. Code, § 270.)
- Legal Aid or Neighborhood Legal Services office.
- Private attorney.
- ! There is also an Office of the Family Law Facilitator in the courts to provide education, information and assistance to parents with child support issues. (Fam. Code, § 10000 et seq.)

**A child, family, or spousal support order may be enforced by writ of execution or notice of levy** without prior court approval, as long as the support order remains enforceable. (Fam. Code, §§ 5100 and 5101.) A support order may not be enforced against an employee benefit plan if the plan was not joined as a party to the

proceeding in which the support order was obtained. (Fam. Code, § 2060.)<sup>114/</sup>

**There is also a Child Support Delinquency Reporting Law**, Family Code section 4700, et seq., pursuant to which the state Department of Social Services administers a statewide automated system for reporting court-ordered child support obligations to credit reporting agencies. Any person with a court order for child support, the payments on which are more than 30 days in arrears, may file in the superior court and serve on the person owing child support, a notice of delinquency and, with certain exceptions, can obtain interest on the amounts due. (Fam. Code, § 4722.) This order can be turned into an enforceable money judgment. (Fam. Code, § 4725.)

**You may get a court order to force your spouse to pay the child support he/she has been ordered to pay, within the time period applicable for enforcing such a judgment, even if the child has turned 18.** (Fam. Code, § 4503.) You can ask a judge to charge your spouse with "contempt of court" for disobeying a court order. (Code Civ. Proc., § 1209.) The penalty for contempt may be a fine of up to \$1,000 or five days in jail, or both for each monthly payment that is not paid in full. Section 4720, et seq., of the Family Code authorizes the imposition of civil penalties on a person who is egregiously delinquent in child support payments.

**Where a party is found in contempt** for failure to comply with a court order issued pursuant to the Family Code, the court can order the performance of community service, imprisonment and/or an administrative fee not to exceed the actual cost of the contemner's administration and supervision while assigned to a community service program. (Code Civ. Proc., § 1218.) If the contempt consists of the omission to perform an act yet in the power of the person to perform, he/she can be imprisoned until he/she has performed it. (Code Civ. Proc., § 1219.) If the contempt is for failure to pay child, family, or spousal support, each month that payment has not been made in full may be alleged as a separate count of contempt, and punishment can be imposed for each count proven. (Code Civ. Proc., § 1218.5.)<sup>115/</sup>

**In 1998, the California Legislature enacted the Uniform Interstate Family Support Act (UIFSA)** (Fam. Code, § 4900 et seq.) to make it easier for California to enforce

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114. Family Code section 5103 appears to provide otherwise, but it was an earlier enacted section and a court would probably follow section 2060, rather than section 5103.)

115. The California Supreme Court recently decided in the case of *Moss v. Superior Court* (1998) 17 Cal.4th 396, that courts can use their contempt powers to force a parent to get a job in order to pay child support because it is a "fundamental obligation" of a parent to support a child.

support orders issued by other state courts. UIFSA streamlines enforcement between states, seeks uniformity and rules for collection of child support, provides district attorneys with the ability to secure out-of-state wage assignments, and calls for reciprocity between the states in implementing wage assignments. In a recent decision, the Court of Appeal ruled that California courts can alter the effect of out-of-state child support orders to take into account money previously owed by one parent to another. (*In re Marriage of Keith G. and Suzanne H.* (1998) \_\_\_\_ Cal.App.4th, 98 Daily Journal D.A.R. 2421.)

**The determination or enforcement of a duty of support owed to a custodial parent is unaffected by any interference by the custodial parent with rights of custody or visitation granted by the court.** (Fam. Code, §§ 3556 and 4845(b); *In re Marriage of Comer* (1996) 14 Cal.4th 504 (noncustodial parent was ordered to pay child support arrears for minor children and reimburse the county for Aid to Families with Dependent Children (AFDC) payments, notwithstanding evidence that the custodial parent actively concealed the children); *Moffat v. Moffat* (1980) 27 Cal.3d 645 (the child's sustenance is the paramount consideration, and depriving a noncustodial parent of visitation rights should not diminish that parent's obligation to provide child support).)<sup>116/</sup>

**Newly enacted Family Code section 5600 et seq. governs the procedures involving inter-county support obligations.**

**Welfare and Institutions Code section 11475.1** obligates the district attorney to maintain a single organizational unit to establish, modify and enforce child support obligations and court-imposed spousal support orders, and to determine paternity in the case of a child born out of wedlock.<sup>117/</sup> (See Fam. Code, §§ 3029, 4002, 4200-4203, 4350 and 7551 et seq.; Welf. & Inst. Code, §§ 11350.1 and 11475.1.)<sup>118/</sup> If you receive public assistance and child support, your spouse must make the child support payments to you through the district attorney's office, and may be ordered to pay child support through that office as well. Families leaving welfare are entitled to receive past-due child support ahead of the state. (Code Civ. Proc., §

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116. However, a parent who conceals a minor child until she reaches adulthood should not be able to seek support arrearages, because the purpose of the support, to benefit the minor child, was defeated when the child reached majority age. (*In re Marriage of Damico* (1994) 7 Cal.4th 673.)

117. The California Attorney General's office is required to take charge of any case or employ special counsel where the district attorney's office is disqualified. (Gov. Code, § 12550.)

118. A Court of Appeal recently ruled that child-support arrearages in non-AFDC paternity actions filed pursuant to Welfare and Institutions Code section 11350.1 may be made retroactive to the filing of a motion or order to show cause pursuant to Family Code section 4009. (*County of Santa Clara v. Perry*, Case No. S062931, review granted, August 13, 1997.)



695.221(f) and (g).)

**For all cases opened after December 31, 1995**, the district attorney's office will only enforce child support arrearages signed under penalty of perjury by the applicant, arrearages accrued after the case was opened, or arrearages determined by the court. For cases opened on or before that date, the district attorney shall enforce only arrearages alleged in a statement or where there is some other reasonable basis for believing that the amount of the claimed arrearages is correct. (Welf. & Inst. Code, § 11350.9.)

**The district attorney is authorized to ask financial institutions** for information regarding absent parents' accounts. (Gov. Code, § 7480.) The district attorney can serve a notice of assignment of earnings to an employer pursuant to Family Code section 5246. An employer is obligated to provide certain health coverage information to the district attorney's office (Fam. Code, §§ 3760-3772). The district attorney's office can also apply for health insurance coverage assignment orders from the court. A court, city, county or other public agency can accept a credit card for payment of child, family or spousal support. (Gov. Code, § 6159.)

**If the person owed the support does not know the location of the person owing the support**, the appropriate district attorney shall make use of the California parent locator service maintained by the Department of Justice and forward information obtained to the court. (Fam. Code, § 5280; Welf. & Inst. Code, § 11478.5 et seq.)<sup>119/</sup>

**According to newly enacted Assembly Bill 1395**, effective January 1, 1998, the district attorney must, with certain exceptions, refer all delinquent child support cases, where no wage assignment is in place, to the Franchise Tax Board for collection. The Franchise Tax Board must provide district attorneys with social security numbers upon request. (Rev. and Tax. Code, §§ 19271 and 19274.)

## **Federal Child Support Laws**

**The Child Support Recovery Act of 1992 (CSRA), 18 U.S.C. § 228**, was enacted to improve child support collection and reduce welfare expenditures by removing

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119. This registry collects and disseminates the following:  
1) the full and true name of the parent, together with any known aliases; 2) date and place of birth; 3) physical description; 4) social security number; 5) employment history and earnings; 6) military status and Veterans Administration or military service serial number; 7) last known address, telephone number, and date thereof; 8) driver's license number, driving record, and vehicle registration information; 9) criminal, licensing, and applicant records and information; and 10) any additional location, asset, and income information, including income tax return information and the address, telephone number and Social Security information obtained from a public utility.

obstacles to a state's ability to prosecute for violation of another state's order. CSRA makes it a federal crime punishable by six months to two years imprisonment and a fine, to willfully fail to support a child living in another state if the obligation is over \$5,000, or has been unpaid for more than one year. (Restitution can also be ordered.) The Ninth Circuit Court of Appeals found CSRA to be constitutional in *U.S. v. Mussari*, (9th Cir. 1996) 95 F.3d 787.

**CSRA is designed to complement the Child Support Enforcement Act of 1985,** 42 U.S.C. §§ 651-669B, Title IV-D of the Social Security Act.<sup>120/</sup>

**In a recent opinion, the United States Supreme Court ruled that the particular items of Title IV-D at issue in that case** did not give individuals a federal right to force a state agency to comply with Title IV-D. (*Blessing v. Freestone* (1997) \_U.S.\_, 117 S.Ct. 1353.) To qualify for federal Aid to Families With Dependent Children (AFDC) funds<sup>121/</sup>, a state must certify that it will operate a child support enforcement program that conforms with the numerous requirements set forth in Title IV-D, and will do so under a detailed plan approved by the Secretary of Health and Human Services. (42 U.S.C. § 602(a)(2) and 652 (a)(3).) The federal government underwrites two-thirds of the cost of a state's child support efforts (42 U.S.C. § 655(a)) if the state establishes a comprehensive system to establish paternity, locate absent parents and help families obtain support orders. (42 U.S.C. §§ 651 and 654.)

**A state must provide these services free of charge to AFDC** recipients, and, when requested, for a nominal fee to children and custodial parents who are not receiving AFDC payments. (42 U.S.C. §§ 651 and 654(4).) AFDC recipients must assign their child support payments to the state and fully cooperate with the state's efforts to establish paternity and obtain support payments. The state may keep most of the support payments it collects from AFDC families in order to offset the costs of providing welfare benefits, but it must pass through to the families some of this money when the families leave welfare. (42 U.S.C. § 657 (a)(2).) Non-AFDC recipients who request the state's aid are entitled to have all collected funds passed through to them. (42 U.S.C. § 657 (a)(3).)

**The structure of each state's Title IV-D agency must conform to federal guidelines.** If a state delegates its disbursement function to local governments, it must reward the most efficient local agencies with a share of federal incentive payments. (42 U.S.C. § 654 (22).) To maintain detailed records of all pending cases, as well as to

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120. UIFSA provides a "long-arm statute" to reach obligors in other states, and a one-time, one-order rule eliminating the problem of inconsistent state support orders for the same child.

121. AFDC will be called Temporary Assistance for Needy Families or "TANF" under the new federal welfare reform laws.

generate reports required by federal authorities and provide for the electronic transfer of funds for income withholding and interstate collections, states must establish computer systems that meet numerous federal specifications by October 1997. (42 U.S.C. § 654 (a).)<sup>122/</sup> Each participating state must also enact laws designed to streamline paternity and child support actions. (42 U.S.C. § 654 (20) and 666.)

**The Office of Child Support Enforcement (OCSE)** within the Department of Health and Human Services, audits states' compliance with their federally-approved plans. For example, states must aim to establish paternity in 90 percent of all eligible cases. (42 U.S.C. § 652 (g).) If a state does not substantially comply with Title IV-D requirements, its AFDC grant can be reduced up to five percent. (42 U.S.C. § 609 (a)(8).)

## **Other Commonly Asked Questions About Divorce**

### **During the divorce proceedings, may I get protection from the court against physical violence by my spouse?**

If your spouse has assaulted or threatened you and you fear that he/she will do so again, you can ask the court to issue a protective order while your dissolution is in progress, ordering your spouse to stay away from your home. If the court feels it is necessary, it may issue an order forbidding your spouse from contacting, either directly or indirectly, by mail or otherwise, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property, coming within a specified distance or disturbing the peace of you or other named family or household members. (Fam. Code, §§ 2045, 6218 and 6320.) The court can order your spouse to be excluded from your dwelling (Fam. Code, § 6321) and can make orders determining the temporary custody of a child to shelter it from exposure to domestic violence or conflict. (Fam. Code, § 6323.) If your spouse knowingly violates any court orders, he/she can be charged with a misdemeanor punishable by a fine of not more than \$1,000, or by imprisonment in county jail for not more than a year, or both. (Fam. Code, § 6388; Pen. Code, § 273.6.)

Family Code Section 3031 encourages the court, when considering the issue of child custody or visitation, to make a reasonable effort to ascertain whether or not

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122. California has complied with Title IV-D requirements since 1975, although as of October 1, 1997, it had not complied with the mandate to establish a single computer network to track deadbeat parents. Because of problems in establishing a workable system, changes in the law may be sought.

any emergency protective orders, protective orders, or other restraining orders are in effect. The court is required to specify the time, day, place and manner of transfer of the child in the custody or visitation order in cases where domestic violence is alleged and a protective order has been issued. If the party is staying at a domestic violence shelter or other confidential location, the court is required to design its custody and visitation order to prevent disclosure of the confidential location. The court is also required to consider whether the best interests of the child require that custody or visitation be suspended or denied or be limited to supervision by a third person. (See also Fam. Code, § 3100 and 6323.)<sup>123/</sup>

Family Code section 6389 provides that a person subject to a domestic violence protective order may not own or possess a firearm while that protective order is in effect, if the court order so prohibits. Violation of such an order is a misdemeanor, punishable by imprisonment in the county jail for a term not exceeding one year, by a fine not exceeding \$1,000, or by both.

If a violation of a court order issued pursuant to Family Code section 6218 (domestic violence protective order) or Code of Civil Procedure sections 527.6 and 527.8 (civil anti-harassment orders) results in physical injury, the person shall be punished by a fine of not more than \$2,000, or by imprisonment for 48 hours up to one year in the county jail, or both. A longer jail sentence is prescribed for a second violation of an order resulting in physical violence within a year of the first violation. The person violating the order may also be ordered to undergo counseling, to make payments to a battered women's shelter, and to reimburse the victim for counseling and other reasonable expenses. (Pen. Code, § 273.6.)

(For further details, see the chapter on Violence Against Women and Children in this handbook.)

### **Does my divorce automatically take my ex-spouse out of my will?**

On divorce, you should review your will because ending your marriage may automatically change a disposition made by your will to your former spouse. (Fam. Code, § 2024.)

### **Can my ex-spouse eliminate responsibility to pay child support and spousal support by filing for bankruptcy?**

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123. Family Code Section 3030 prohibits a court from granting custody or unsupervised visitation to any person who is required to register as a sex offender under Penal Code section 290 and prohibits convicted rapists from being awarded custody of or visitation with a child conceived as a result of a rape.

Congress allows for exceptions to a debtor's ability to discharge all his/her debts in bankruptcy. One of these exceptions is for certain familial obligations (alimony, maintenance or support) awarded through a settlement agreement or during the course of a divorce proceeding. (11 U.S.C. § 523(a)(5) and (15); *In re Sternberg* (9th Cir. 1996) 85 F.3d 1400, 1405.) In addition, 11 U.S.C. § 523(a)(4) may prevent a debtor from discharging in bankruptcy debts arising from fraud committed while acting towards the spouse in a fiduciary capacity. Family Code, section 3592, also allows, in the interest of justice, modification of a support decree following a discharge of marital debts in bankruptcy.

**What happens to medical insurance coverage which my ex-spouse or deceased spouse had been providing me through his/her employment?**

Sponsors of employee benefit plans that provide medical insurance are required to offer continuing coverage for persons who would otherwise lose their coverage because of the death of a spouse, or as the result of a divorce or legal separation. (29 U.S.C. §§ 1161-1169.) If either of these events occur, you should contact your plan sponsor to notify them that you want to continue medical coverage. The plan sponsor is required to provide you with information regarding rights and responsibilities relating to continuing coverage.

## **Legal Separation**

**For some people, religious, economic or other reasons make a divorce undesirable.** If you do not want a divorce, but you and your spouse are living apart and have no hopes of reconciling, you and your spouse can obtain a legal separation.

**Grounds for a legal separation are the same as those for divorce.** A legal separation can be obtained on the grounds of irreconcilable differences or incurable insanity. (Fam. Code, § 2310.)

**There is no residency requirement for a legal separation.** You do not need to have lived in California for six months to apply for a legal separation. (Fam. Code, § 2330.)

**When you make a request for a legal separation, a property settlement and arrangements for spousal support, child support and child custody must also be made.** (See discussion, *supra*, under Marital Dissolution.) An order to establish paternity can also be sought. (Fam. Code, § 2330.1.)

**Community property laws apply to legal separations just as they do to divorce.** When you receive a legal separation, you are entitled to half of all property earned

by you or your spouse during your marriage. (See discussion, *supra*, under Marital Dissolution.)

**If one spouse asks for a legal separation and the other spouse asks for a divorce, the court will proceed with the divorce.** (Fam. Code, § 2345; 2347.)

**If you and your spouse are separated without a legal order and have no intention or hope of reconciling, your earnings after separation are your own, and your spouse's earnings are his/her own.** Such earnings are not community property unless the spouses are merely living apart on a temporary basis. (Fam. Code, § 771.)

**A legal separation does not end your marriage.** You cannot remarry unless you get a divorce. (Fam. Code, § 2201.)

## **Voidable Marriages**

**The legal term for an annulment is a "nullity."** If you get a nullity, the court will say that legally your marriage never existed.

**The grounds on which a marriage is voidable are strict and most people do not qualify.** Possible circumstances under which you may obtain a nullity include: if you were married at too young an age, and without proper consent; if your consent to the marriage was obtained by fraud, or force; if either party is of unsound mind or physically incapable of entering into the marriage state; or if you wrongfully believed your first spouse to be dead. A lawyer can best counsel you on whether you meet the qualifications to receive an annulment. (Fam. Code, § 2210 et seq.)

**You may legally remarry at any time after the court grants you a nullity.** (Fam. Code, § 2212.)

## **Void Marriages**

**Marriages that are declared void are treated as if they never existed.** After a marriage is declared void, legally it is as if the couple were never married. (Fam. Code, § 2212.)

**If either or both spouses in a marriage that has been declared void believed in good faith that the marriage was valid, the spouse must be treated as a putative spouse.** In such a case, what would have been considered "community property" in a marriage is called "quasi-marital property" and is divided like community property. (Fam. Code, §§ 2251-2252.)

**Some marriages are void from the beginning. The grounds upon which a marriage can be found to be void are incest and bigamy/polygamy, with certain exceptions. (Fam. Code, §§ 2200-2201.)**

## **Bigamy**

**Bigamy is being married to two people at the same time.**

**Bigamy is illegal.** If you are married to two people at the same time, the marriage that occurred second is generally illegal and considered void. (Fam. Code, § 2201.)

**Bigamy is punishable** by a fine not exceeding \$10,000, or by imprisonment in a county jail not exceeding one year or in the state prison. (Pen. Code, § 283.)

**If your spouse is absent for more than five years and you believe him/her dead, then marrying again is not considered bigamy.** (Fam. Code, § 2201.)

## **Incestuous Marriage in California**

**An incestuous marriage** is defined as marriage between parents and children, ancestors and descendants of every degree and between brothers and sisters, including half-brothers and sisters, and between uncles and nieces, or aunts and nephews. Such marriages are void from the beginning. (Fam. Code, § 2200.)

**Engaging in an incestuous marriage or in incestuous sexual intercourse is a criminal offense and is punishable by imprisonment in the state prison.** (Pen. Code, § 285.)

**Solemnizing incestuous marriages is forbidden.** Doing so willfully and knowingly can lead to a fine or imprisonment. (Pen. Code, § 359.)

**The issues involved in bigamy and incest are complicated.** It is best to consult a lawyer with specific problems or questions.

**A judicial proceeding must be filed to declare a void marriage a nullity.** (Fam. Code, § 2250.)

## **Living Together Without Marriage**

**In most situations, California law does not recognize cohabitation as a legal contract** between two people, as it does marriage. However, you do have some rights with respect to the person you are living with, particularly if you have some

sort of written or oral agreement. Also, if you have children by a person you are not married to, your children and their biological parent have a legally protected relationship.

## **Rights and Responsibilities**

**Under California law, you may not contract a common law marriage.** (A common law marriage is a "marriage" where two people live together with the intention of being married, but do not participate in the ceremony; Fam. Code, § 300.) However, if you have contracted a common law marriage in a state that recognizes such marriages to be valid, California will recognize your common law marriage as valid. (Fam. Code, § 308.)

**If you are living with a man, he may adopt your children, but the children's father must usually consent to the adoption.** (Fam. Code, §§ 8604 and 8606.)

**If you have been living with someone without being married, you may have some rights if you separate.** In *Marvin v. Marvin* (1976) 18 Cal.3d 660, the California Supreme Court upheld the enforceability of oral or written contracts between two people living together. The court held that where a man and woman live together and they make an agreement that one person will provide household services (excluding sexual services) with the reasonable expectation of being paid for those services, the person who performed those services has a legal right to be compensated at the agreed amount, or at reasonable value for those services. The court ruled that when an unmarried couple separates, the court has the power to divide the property according to the couple's reasonable expectations during cohabitation. A presumption that the unmarried couple intended to deal fairly with each other will be applied by the court. However, intentions, expectations, and agreements of two people are very difficult to prove if they are not stated in some form of written agreement.

**Since the *Marvin* case, the court of appeal has twice refused to award support to a cohabitant** either as a rehabilitative award (*Taylor v. Polackwich* (1983) 145 Cal.App.3d 1014, or as temporary support (*Friedman v. Friedman* (1993) 20 Cal.App.4th 876). Yet two more recent Court of Appeal cases have signaled more favorable treatment of support claims after termination of cohabitation relationships that resemble marriage (*Byrne v. Laura* (1997) 52 Cal.App.4th 1054 (where the court suggested that Byrne could argue for all or half of her cohabitant's assets by way of support based on an oral or implied agreement) and *Cochran v. Cochran* (1991) 56 Cal.App.4th 1115 (the court indicated that the statute of limitations for breach of an oral agreement of support commenced when Cochran stopped paying support)).



**If the person with whom you have been living dies without leaving a will, you will not inherit any of his/her possessions.** His/her property will pass to his/her surviving family members. You might be able to claim a portion of his/her estate if you had an expressed agreement to pool your earnings and belongings. However, this is difficult to prove if your agreement was not in writing. For the protection of both parties, you and your partner should each prepare a will to ensure that your intentions are carried out. (Prob. Code, § 6110 et seq.)

## **Children of an Unmarried Couple**

**California no longer categorizes children as "legitimate" or "illegitimate."** The law says that the parent-child relationship extends equally to every child and to every parent, regardless of the marital status of the parents. Establishing a parent-child relationship is important for such things as inheritance, child support obligations,<sup>124/</sup> custody of children, and adoption. Everything in this section applies to any person who is the parent of your children, whether you ever lived with that person or not.

**The court can issue an order to establish paternity for purposes of determining child support,** through the administration of blood tests to the mother, child and alleged father, if appropriate. If a party refuses to take a blood test, the court can resolve the issue of paternity against that party. (Fam. Code, §§ 2330.1 and 7550-7557, et seq., and Welf. & Inst. Code, § 11352.) A voluntary declaration of paternity may also be made. (Fam. Code, § 7570 et seq.)

**A previous determination of paternity by another state court is given full faith and credit by California courts.** (Fam. Code, § 4846.)

**If you have a child with a person you are not married to, that person has the same obligations to the child as if you were married.** (Fam. Code, § 7602.)

- A child born outside of marriage has the same inheritance rights as a child born in marriage. (*In re Bassi's Estate* (1965) 234 Cal.App.2d 529, 541-548.)
- A child born outside of marriage has the same rights to receive through his/her parents Social Security, union and insurance benefits as a child born in marriage. (*Rodriguez v. Rodriguez* (N.D. Cal. 1971) 329 F.Supp. 597.)

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124. A new law, effective January 1, 1998, amends Family Code section 7571 to provide that signing as the father on a birth certificate when the father is not married to the mother will require the filing of a declaration of paternity with the birth certificate. (Assem. Bill No. 573, 1997-1998 Reg. Sess.)

- A child born outside of marriage may sue a third party for the wrongful death of a parent. (*Juarez v. System Leasing Corp.* (1971) 15 Cal.App.3d 730, 737.)

**A man is presumed to be the father of a child if any of the following conditions exist** (Fam. Code, § 7611):

- The man and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage ends. (The marriage could have ended by death, annulment, declaration of invalidity, divorce, or a judgment of separation entered by the court.) This section applies to you if your marriage is ended while you are pregnant.
- The man and the child's natural mother attempted to legally marry each other before the child was born but for some reason the marriage is or could be declared invalid.<sup>125/</sup>
- The man and natural mother have married or attempted to marry, but the marriage could later be held invalid for some reason and the man is named as the father on the child's birth certificate with his consent; or the man is ordered by the court to support the child or voluntarily promises to do so.
- The man receives the child into his own home and openly holds out the child as his own natural child.

**A presumption means that the court will hold the man to be the father of the child if any of the above circumstances exist**, unless he can provide clear and convincing evidence that he is not the father. (Fam. Code, § 7612.)

**According to Family Code sections 7540-7541,** <sup>126/</sup> the child of a wife cohabiting

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125. The man is presumed the father if (a) the attempted marriage could only be declared invalid by a court and the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity or divorce or (b) the attempted marriage is invalid without a court order and the child was born within 300 days after termination of cohabitation.

126. The constitutionality of Evidence Code section 621, now contained at Family Code section 7540, was upheld by the United States Supreme Court in *Michael H. and Victoria D. v. Gerald D.* (1989) 491 U.S. 110, 131-132, even though the section denied a man the opportunity for a hearing in order to prove that he was the biological father of a child born to a woman while she was married to another man. State law presumes that a child born of a woman living with her husband is that couple's child. The California Supreme Court recently ruled that because of this presumption, a

with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage, unless the court finds otherwise, based on conclusions of experts who have performed blood tests on the husband within two years of the child's birth.

**You may get child support from the father of your child even if you were never married to him.** If you want to establish that a man is the father of your child, you may bring an action in the superior court. Jurisdiction is established if the person had intercourse in this state and the child could have been conceived by that act of intercourse. (Fam. Code, § 7620.) If the court decides that a man is the father of your child, the court may order him to pay for part of the child's support. The court can also order the father to help pay for part of the expenses you incurred during your pregnancy. The district attorney may also bring an action to establish paternity if he/she feels it appropriate to do so, as may a man presumed to be the child's father, the child or any interested party. (Fam. Code, § 7630 et seq.)

**Unmarried parents may petition the court to receive assistance in developing custody and visitation plans.** You do not need an attorney to receive such assistance. (Fam. Code, § 7637.)

**The Family Support Act of 1988 (42 U.S.C. § 602) required states by 1991 to substantially increase the number of cases in which paternity is established.** By 1990 or later, the Act required the tracking of social security numbers of both parents for every child born and by 1991, genetic testing, largely paid by federal funds, in all contested paternity cases. (Fam. Code § 7550 et seq. implements this federal act.)

**Even if you were never married, the father of your child can request that the court give him custody or visitation rights.** (Fam. Code, § 7637.) Refusal to allow a parent to exercise custody rights is a criminal violation. (Pen. Code, § 277 et seq.)

## **Parental Responsibility for Children**

**According to California law, the father and mother of a minor child have an equal responsibility to "support their child in the manner suitable to the child's**

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man claiming to have fathered the child was not entitled to an opportunity to prove his claim. (*Dawn D. v. Superior Court*, (1998) \_\_\_\_ Cal.4th \_\_\_\_, 98 Daily Journal D.A.R. 1248.) See also *Rodney F. v. Karen M.* (1998) \_\_\_\_ Cal.App.4th \_\_\_\_, 98 Daily Journal D.A.R. 1248, as modified at 98 Daily Journal D.A.R. 2233 (an unmarried man who claims to be the biological father of a married woman's child cannot prove paternity through blood test results.)

**circumstances.** (Fam. Code, § 3900.)<sup>127/</sup> This may be enforced more easily when a child's biological parents are married and living together. However, regardless of the relationship between a child's parents, each parent has a responsibility to support his or her child. The sections on divorce and unmarried couples dealt with child custody and child support in those cases. This section will give you an overview of parent-child rights and responsibilities, and then will discuss alternative parenting methods, particularly adoption, artificial insemination, and surrogate motherhood.

## **Rights and Responsibilities**

**Until a child is an adult or marries, his or her parents are generally legally responsible to provide for that minor's support,** including health care, and education. (Fam. Code, § 7505 and Welf. & Inst. Code, § 14008.)

**If a parent is incarcerated,** Welfare and Institutions Code section 361.5 (e)(1) provides that the court shall order reasonable services (such as maintaining contact through collect telephone calls, transportation services, visitation services, or reasonable services to extended family members or foster parents providing care for a minor), unless determined by clear and convincing evidence to be detrimental to a minor.<sup>128/</sup> In determining detriment, the court will consider the age of the minor; the degree of parent-child bonding; the length of the parent's sentence; the nature of the parent's crime or illness; the degree of detriment to the minor if the services are not offered; for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services; and any other appropriate factors.

**You may be held responsible for your child's actions.** If a child willfully defaces or destroys property of another, causes injury to another or causes the death of another, the parent or guardian having custody or control of the child may be held responsible, along with the child, for the willful act. The maximum amount that any one parent or guardian will be held responsible for willful misconduct is \$25,000 for each willful act of the child, and \$25,000 in medical, dental and hospital expenses, in

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127. A grandparent does not have the duty to support his or her grandchild. (Fam. Code, § 3930.)

128. Reunification need not be provided in other circumstances, such as where the parent or guardian willfully abandoned the child, causing serious danger to the child. (Welf. & Inst. Code, § 361.5.)

addition to any other liability imposed by law.<sup>129/</sup> A parent or guardian having custody or control may also be liable for court costs and attorneys' fees, and up to \$50,000 in damages if the minor defaced property. (Civ. Code, § 1714.1; Pen. Code, § 594.)

**If damage was created by graffiti**, parents are equally liable for the costs of removal, repair and/or replacement of the property. (Gov. Code, § 38772.) Parents who have signed a minor's consent form to obtain tear gas will be liable to those victimized by such gas, as long as the gas was not used for the purpose of self-defense. (Pen. Code, § 12403.8.) Parents will be asked to pay fines up to \$100 for their children's truancy. (Ed. Code, § 48264.5(a)(2).) Parents are liable for up to \$10,000 in damages and/or up to \$10,000 in rewards for finding the culprit where injuries to persons or property on school grounds have occurred. (Ed. Code, § 48904.) If a child steals from merchants or steals books or materials from libraries, the parents are responsible for up to \$1000. (Pen. Code, § 490.5.) Finally, parents must pay the transportation costs of children who are picked up for breaking curfew. (Welf. & Inst. Code, § 625.5.)

**However, if your child is under 18 and causes injury or death to another** by a gun that you permitted him or her to have or that you left in a place accessible to him/her, you may be held responsible for up to \$30,000 if one person was injured or killed, or for up to \$60,000 if two or more people were injured or killed. (Civ. Code, § 1714.3.)

**There are a number of ways your child can cease to be your legal responsibility:**

- ! The court can appoint a new guardian for the child, or declare it a dependent child. The court does not need your consent if it finds you are an unfit parent.<sup>130/</sup> (Welf. & Inst. Code, § 300.)
- ! The court, at the request of the California Department of Social Services, a county welfare department, a private or public adoption agency, a county adoption department, a

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129. These amounts will be adjusted every two years to reflect cost of living increases. (Civ. Code, § 1714.1(c).)

130. Every order placing a minor in foster care and ordering reunification services with a parent, usually for up to 18 months pursuant to Welfare and Institutions Code section 361.5, must provide for visitation between the parent and the minor as frequently as possible, consistent with the well-being of the minor. (Welf. & Inst. Code, § 362.1(a).) Submission to random drug-testing may be ordered as a condition of reunification, where appropriate. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001.) Attendance at parenting classes or drug counseling sessions may also be ordered as a condition of parent-child reunification. (*Cresse S. v. Superior Court* (1996) 50 Cal.App.4th 947, 953.)

county probation department or county counsel or a district attorney acting at the request of one of the above-mentioned state or county agencies, can declare a minor free from the custody and control of either parent, under certain circumstances, as set forth at Family Code section 7800 et seq.<sup>131/</sup>

- ! If a child is at least 14, lives separate or apart from his/her parents or legal guardian with their consent or acquiescence, is managing his/her own financial affairs and is not deriving his/her income from criminal activity, the court can declare him/her an emancipated minor, usually after notice to the parents, guardians, or other persons entitled to custody. If the court does so, the child becomes responsible for his/her own well-being. (Fam. Code, § 7120 seq.)
- ! Once your child marries, he/she is no longer considered a minor, even if he/she younger than 18 and even if the marriage is dissolved. (Fam. Code, §§ 7002 and 7505.)
- ! Anyone under 18 who is on active duty in the military is considered an emancipated minor. (Fam. Code, § 7002.)<sup>132/</sup>

## Children's Obligations Toward Parents

**An adult child usually has an obligation, to the extent of his/her ability, to support a parent** who is in need and unable to maintain himself/herself by work. (Fam. Code, § 4400.) The promise of an adult child to pay for such support is enforceable (Fam. Code, § 4401), and a parent, or the county on behalf of the parent, may bring an action to enforce this duty. (Fam. Code, §§ 4403-4405.) A child can be relieved of the responsibility to support a parent who abandoned him/her. (Fam. Code, § 4410 et seq.)

## Adoption

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131. According to Family Code sections 7862 and 7895, an indigent parent is entitled to counsel at both the trial and appellate level, and to provision of a reporter's and clerk's transcript at the state's expense on appeal from a proceeding pursuant to Family Code section 7800 et seq.

132. Once a minor is emancipated, parents do not have to give permission for anything the minor may wish to do. They no longer have to provide their child with support, or any necessities, such as food, shelter or medical care. An emancipated minor can make his/her own medical, dental or psychiatric care decisions. He/she can also enter into a contract, sue and be sued in his/her own name, make or revoke a will, buy or sell interests in property, and apply for a work permit without parental consent. Emancipation can be rescinded by the court. (Fam. Code, §§ 7050-7051 and 7140.)

**Under California law, the rights and responsibilities of adopted children and their parents are the same as those of natural children and their parents.** (Fam. Code, §§ 8616 and 9305.) After adoption, the biological parents of an adopted child are generally relieved of all parental duties and responsibilities toward the child. (Fam. Code, §§ 8815, 9005 and 9306.) An adopted child may take the family name of the adoptive parent. (Fam. Code, §§ 8618 and 9304.)

However, there are a number of issues unique to adoption situations.

## **Requirements For Adoption**

**The person adopting a child (anyone under the age of 18) must be at least 10 years older than the child.** However, if the adoption is by a stepparent, sister, brother, aunt, uncle or first cousin of the child, and if married, the spouse of the stepparent, sister, brother, aunt, uncle or first cousin, the court may approve an adoption without a ten-year age difference if it is in the best interests of the parties and the public. Any adult person may adopt any younger adult who is not his/her spouse. Under California law, you need not be married to adopt a younger adult. (Fam. Code, § 8601.)

Consent of both biological parents to an adoption is necessary unless:

- the parent(s) willfully failed to support or communicate with the child for over a year when able to do so (the absent parent must be served with notice to appear in court).
- a court order deprived the parent(s) of custody and control of the child.
- the birth parent voluntarily surrendered the right to custody and control of the child in a judicial proceeding in another jurisdiction.
- the parent(s) has deserted the child without provisions for identifying the child.
- the parent(s) relinquished the child for adoption. (Fam. Code, §§ 8604-8606.)

**The consent of a child, if over the age of 12 years, is necessary to the child's adoption.** (Fam. Code, §§ 8814(d) and 9003.)

**A person who is a minor may relinquish a child for adoption.** (Civ. Code, §§ 224 and 226.1(d).)

**Once consent is given for an adoption, it may not be revoked after a waiver** of the rights to revoke has been signed or after 90 days, beginning on the date the consent was signed, whichever occurs first. (Fam. Code, § 8814.5.)

**Your spouse may not adopt a child without your consent unless you are legally separated or are unable to give consent.** (Fam. Code, § 8603.)

**Under certain circumstances, the court can be petitioned to set aside an adoption** within five years of entry of the order of adoption, where there is evidence of a pre-existing developmental disability or mental illness. (Fam. Code, § 9100 et seq.)

## **Discovering the Identity of Your Natural Parent or Child**

**The birth parent may, at the time of adoption or later, authorize the California Department of Social Services to provide the person who has been adopted with the name and address of their birth parent** when the person reaches the age of 21, if that person requests it and the birth parent has authorized it, or earlier, in the event of a medical necessity or other extraordinary circumstances. (Fam. Code, § 9203.)

**Adoptive parents, persons who have been adopted and birth parents of adopted children may have access to DNA test results of blood samples** stored pursuant to state law in connection with the adoption. (Fam. Code, § 9202.5.)

**An adult adoptee, his/her natural parents, and his/her adopted parents, may sign a waiver of his/her rights with respect to the confidentiality of the adoption record.** If this is done, the Department of Social Services or any licensed adoption agency may arrange a contact. (Fam. Code, § 9204.)

**Upon written request, the Department of Social Services or any licensed adoption agency will release to the adoptee, if 18 or over, to the adoptive parents on the adoptee's behalf if he/she is under 18, or to the birth parents, any letters, photographs, or other items of personal property.** Identifying names and addresses will be deleted from such documents. (Fam. Code, § 9206.)

**An adopted person may file a request for contact with natural siblings and a waiver of confidentiality to grant siblings contact rights.** The adopted person must be at least 21 for such a request to be made. If his/her siblings are also 21 or older and have filed such requests and waivers, if applicable, contact will be arranged. (Fam. Code, § 9205.)

**In some other states, adoption records are sealed and may not be released to the birth parents or the adopted child.** There are organizations that may be able to help you locate a birth parent or a child given up for adoption. Some of these are:

**PACER**



Post Adoption Center for Education and Research  
(510) 935-6622

**The ALMA Society**  
(Adoptees' Liberty Movement Association)  
Bay Area Chapter  
(510) 689-5583

## **Other Questions Often Asked About Adoptions**

### **What sort of financial arrangements can be made between the natural mother of a child and the child's adoptive parents?**

It is illegal for anyone to pay a parent to place his/her child up for adoption, the consent to an adoption, or for the cooperation in the completion of an adoption. However, it is not illegal to pay maternity-connected medical, hospital and living expenses during and immediately after pregnancy. Such payment cannot be contingent upon placement of a child for adoption, consent to the adoption, or cooperation in the completion of the adoption, although it is a misdemeanor punishable by one year in jail or a \$2,500 fine for a parent to obtain these financial benefits with the intent not to complete the adoption or consent to the adoption, or to obtain more expenses than incurred, or not to disclose that there are other families interested in adopting the child. (Pen. Code, § 273.)

### **Is it possible to receive financial assistance with an adoption?**

You may be able to receive some financial assistance from the government if you choose to adopt a "hard-to-place child." For more information, contact the California Department of Social Services. (Welf. & Inst. Code, § 16115 et seq.)

### **Do I have any responsibility for my child if I relinquish him/her for adoption by his/her stepparent?**

If you and your child ever lived together, your child may still have some rights to inherit your property and the property of other blood relatives. (Fam. Code, § 9004.)

## **Alternative Methods of Becoming Parents**

### **Artificial Insemination**

**Artificial insemination involves the fertilization of a woman's egg using sperm from a donor.** In some cases, the donor is chosen by the recipient. In other cases, an unknown donor is used.<sup>133/</sup> Artificial insemination is one way for couples that cannot otherwise conceive children. It is also a way that single women can conceive.

**Under the law, the husband of a woman who has been artificially inseminated by the semen of another man is usually treated as if he were the natural father of the child.** In order for this to be true, the artificial insemination must have been done with the written consent of the husband and under the supervision of a licensed physician. (Fam. Code, § 7613.) A man involved as a semen donor in an informal insemination arrangement may establish that he is the child's father and may be able to acquire visitation privileges. He may also become liable for support. (*Jhordan C. v. Mary K.* (1986) 179 Cal.App.3d 386.)

**In a Court of Appeal decision, *Alexandria S. v. Pacific Fertility Medical Center, Inc.* (1997) 55 Cal.App.4th 110, the court determined that a child conceived by artificial insemination by a donor could not sue the fertility clinic and the doctors for failing to certify the signatures on the consent form, pursuant to Family Code section 7613(a).**

## **Surrogate Parenting**

**A surrogate mother is usually paid a set fee by a couple pursuant to a surrogacy contract to be artificially inseminated with the husband's sperm.** Customarily, the contract is between the prospective biological father and the surrogate mother, with an intermediary fertility center, organization, or other party serving as a broker between the two parties. The contract provides that, after the delivery, the surrogate mother must give up her parental rights to the child, with the biological father receiving full custody rights. The husband of the surrogate mother also surrenders any claim to the child. Both the surrogate and her husband agree not to develop a parental relationship with the child. Paternity of the inseminating father is confirmed through genetic testing. The wife of the biological father is not a party to the contract. She adopts her husband's child upon the surrogate mother's relinquishment of her parental rights to the child.

**Surrogate parenting agreements also may involve medical and psychological**

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133. On June 19, 1997, the California Supreme Court ordered a trial court judge to defend his decision requiring that a sperm bank disclose the identity of one of its donors to a couple who claim that their child contracted a serious genetic kidney disease from the donor. (*Cryobank, Inc. v. Superior Court*, Case No. S062017.)

**testing and screening** of both surrogate and inseminating father, a review of the medical records of the surrogate mother's other children, and continued medical monitoring during the pregnancy. Contracts specifically may prohibit the surrogate mother from drinking alcohol, taking drugs or smoking, and may require that amniocentesis be performed. Contracts also may specify when the child is to be adopted and stipulate that the inseminating father and adoptive mother will take custody in the case of birth defects or multiple births.

**Fees and expenses are delineated and the money is placed in escrow.**

Compensation of the surrogate mother in the event of a miscarriage and future attempts to impregnate the surrogate are also addressed. Most contracts provide for reimbursement for the surrogate's attorney fees and may include anonymity provisions. Some contracts include the surrogate's acknowledgment of the adopting couple's emotional investment in the arrangement, in an effort to provide the latter with legal recourse for intentional infliction of emotional distress should the surrogate mother renege on the agreement. The costs of surrogate parenting include a surrogate fee; a substantial broker's fee for legal representation; administrative scheduling and counseling costs; and maternity expenses.

**The best known surrogate case to date is *In the Matter of Baby M*** (Sup. Ct. N.J. 1987) 537 A.2d. 1227, in which the New Jersey Supreme Court declared surrogate parenting contracts unenforceable. California has not passed a law supporting or outlawing surrogate parenting.

**In a recent opinion, *Johnson v. Calvert* (1993) 5 Cal.4th 84**, the California Supreme Court held that although the Uniform Parentage Act (Fam. Code, § 7600 et seq.) recognizes both genetic consanguinity and giving birth as means of establishing a mother and child relationship, when the two means do not coincide in one woman, the one who intended to procreate the child is the natural mother under California law. In this case, a childless married couple and another woman entered into a contract whereby the embryo created by the gametes of the couple would be implanted in another woman's uterus. The court held that the surrogacy agreement, under which the childless couple became the parents in return for payment of a fee and purchase of a life insurance policy for the surrogate, was not inconsistent with public policy; no involuntary servitude was involved, and termination of the surrogate's claims to the child was not otherwise unconstitutional. In a California court case involving surrogate parenting, the Court of Appeal upheld a trial court's denial of a surrogate mother's petition to withdraw consent to adopt, and her motion to vacate a judgment of paternity. (*In re Adoption of Matthew B. - M.* (1991) 232 Cal.App.3d 1239.) The court held that the best interests of the child were its paramount concern. (*Id.* at p. 21.) The court did not attempt to resolve the debate over the desirability or validity of surrogate contracts.

(*Id.* at p. 22.)<sup>134/</sup> It determined that the petition to withdraw consent to adoption could be denied without enforcing an allegedly illegal contract; relied on case law indicating that courts normally refuse to intercede where the parties have fully performed under an illegal contract; determined that the parties knowingly assumed the risk of illegality in entering into the contract; and determined that the state's paramount interest in the child's welfare overrode its interest in deterring illegal conduct. (*Id.* at p. 25.) The court also rejected the surrogate mother's attempt to vacate the paternity judgment, given the surrogate mother's stipulation to the original judgment, her designation of the father as the natural father on numerous documents, and the fact that the father's sperm had been used to inseminate her. (*Id.* at p. 34.)

**In another surrogacy case, *In re Marriage of Moschetta* (1994) 25 Cal.App.4th 1218,** the Court of Appeal held that under Family Code section 7541(a) (question of paternity resolved according to blood tests), genetic parenthood established by blood tests overcomes the presumption under Family Code section 7540 that the child of a wife, cohabiting with her husband, is presumed to be a child of the marriage. The court held that with surrogacy, there was no need to resort to presumptions. Under the Uniform Parentage Act parentage was easily resolved, not in favor of the wife, but in favor of the biological mother, who did not consent to adoption pursuant to Family Code section 8814. The court remanded the matter for reevaluation as to whether the husband, who was in the process of divorcing the wife, should be awarded primary physical custody.

**The Fourth District Court of Appeal ruled on a novel surrogacy issue in *Buzzanca v. Buzzanca*, \_\_\_ Cal.App.4th \_\_\_, 98 Daily Journal D.A.R. 2436.** The court held that a couple with no biological ties to a surrogate child were its legal parents because they caused the birth to take place by signing a contract, and that the newly declared father was required to pay child support.

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134. This reference in the court's opinion indicates that there is still some uncertainty about the validity or wisdom of surrogate contracts.

# CHAPTER SEVEN

## VIOLENT CRIMES COMMITTED AGAINST WOMEN AND CHILDREN

**This chapter deals with crimes of violence against women and children.**

Specifically, it concentrates on sexual assault; battering of spouses, cohabitants and the parents of one's children; and child and elder abuse. This chapter discusses the legal definitions of each of these violent acts, and gives information on the legal, medical and counseling resources available to survivors of such abuse.

### RAPE AND OTHER FORMS OF SEXUAL ASSAULT

**Rape is one of the most dehumanizing crimes of violence.** The outrage of rape is often compounded by other violent, sexually assaultive types of crime, such as forced oral copulation, forced sodomy and rape by instrumentality. This chapter discusses California law defining rape, including rape by a spouse, and other forms of sexual assault. It details legal procedures a victim of sexual assault may take, and describes medical and counseling services available to rape victims. Also included is a list of precautions for safety at home and on the street to help women try to reduce the risk of rape and other forms of sexual assault.

**Many people have the wrong idea about sexual assault.** They mistakenly believe that rapists are overcome with sexual desire or that a woman who is raped may have dressed too seductively or "asked for it" in some manner. These ideas assume that rape is only a sexual act, a crime that is motivated by desire. It is not. Rape is a violent crime, a hostile act, and an attempt to hurt and humiliate another person. Sex is used as a weapon, and rapists use that weapon against women, strangers and acquaintances of all ages, races and body types.

**Women are attacked by men in the vast majority of incidents of sexual assault involving an adult man and woman.** Most men who are sexually assaulted are

assaulted by other men. A proportionally small number of sexual assaults involve a woman attacking a man or another woman. Therefore, this section is addressed primarily to women who have been attacked by men. However, most of the information in this section is applicable to all forms of sexual assault, regardless of the gender of the assailant or victim.

## **If You Are Attacked**

**Literature differs on the best way to protect yourself during an assault.** All agree, however, that the first thing to do is to **TRY TO GET AWAY -- SCREAM, BLOW A WHISTLE, MAKE NOISE, RUN TO SOME PLACE WHERE THERE ARE PEOPLE OR WHERE YOU WILL BE SAFE.**

**If you are unable to get away immediately, try to stay calm** until you can find an opportunity to escape. Be familiar with your limitations. Do not resist a man who is wielding a knife, gun or other weapon. Do not worry about "winning" - worry about staying alive and getting away.

### **Active Resistance**

**If, by using your body as a weapon, you decide you can escape, do it.** Self-defense experts warn that you **MUST ACTUALLY DISABLE** your attacker if you want to escape from him, not merely cause pain. Aim for his sensitive areas -- eyes, nose, groin. Your teeth, arms, feet, fingernails, and fists can be effective weapons. You may be able to use pepper spray or tear gas if you have been trained or licensed to use it. Avoid other weapons - weapons you carry yourself can be taken away and used against you.

### **Passive Resistance**

**If you are unable to escape and are afraid to resist by fighting back or screaming, a more passive type of resistance may defuse the violence of the attacker.** There are several things you can do:

- Try to calm the attacker. Talk to him and try to persuade him not to carry out the attack. If you win his confidence, you may be able to escape.
- Claim to be sick or pregnant. Tell him you have venereal disease (VD), acquired immune deficiency syndrome (AIDS) or herpes. This may deter the attacker.
- If possible, vomit to repel your attacker.
- Try to discourage the rapist. Some women pretend to faint, some cry

hysterically, and others act insane or mentally incapacitated.

- If you are at home, tell the attacker that you are expecting someone -- a boyfriend, husband or friend.

**Remember:** There is no single right way to stop an attack. Try to do what you can, but the most important thing is to survive.

## Legal Definitions of Sexual Assault

### Rape

**Rape, a felony, is defined by Penal Code section 261 et seq. as an act of sexual intercourse, including sexual penetration, no matter how slight, with a person who is not the spouse of the rapist, under any of the following circumstances:**

- Where a person is incapable of giving legal consent because of a mental disorder or developmental or physical disability and the rapist knows, or should know it.
- Where it is accomplished against a person's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another.
- ! Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance,<sup>135/</sup> and this condition was known, or reasonably should have been known by the accused.
- Where the person is unconscious of the nature of the act and the rapist knows it, either because she is unconscious or asleep or unaware that the act occurred or not cognizant of the essential characteristics of the act because of the rapist's fraud.
- Where the person submits under the mistaken belief that the rapist is her spouse and the rapist intentionally induced that belief.
- Where it is accomplished by the rapist threatening to retaliate in the future against the victim or anyone else, and there is a reasonable possibility that the rapist will carry out the threat (threatening to retaliate means a threat to kidnap or falsely imprison or to inflict extreme pain, serious bodily injury or death).

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135. Two drugs commonly used by sexual predators to knock out their victims before raping them are Rohypnol and GHB. The drugs are odorless, nearly tasteless, potentially lethal, and have become fixtures at parties and clubs in recent years. Their use makes rape prosecution difficult because the victims wake up unsure of what has occurred.

- Where it is accomplished against a person's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the person, and the person has a reasonable belief that the perpetrator is a public official. The perpetrator does not actually have to be a public official. A public official is defined as a person employed by a governmental agency who has the authority to incarcerate, arrest or deport another.

## **Rape by A Spouse**

**Rape by a spouse is a crime in California.** Spousal rape is defined as an act of sexual intercourse accomplished against the will of the other spouse by means of force or fear of immediate bodily injury on the spouse or on another; where a person is prevented from resisting by any intoxicating or anesthetic substance or any controlled substance, and this condition was known or reasonably should have been known by the rapist; where a person is incapable of resisting because unconscious, asleep, unaware that the act occurred, or not cognizant of the essential characteristics of the act, due to the rapist's fraud; where the rape is accomplished by threatening to retaliate in the future against the spouse or any other person, and there is a reasonable possibility that the rapist will execute the threat; or where the act is accomplished against the spouse's will by threatening to use the authority of a public official to incarcerate, arrest or deport the spouse, or another, and the spouse has a reasonable belief that the rapist is a public official. As with the general definition of rape, the word retaliation means a threat by the rapist to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death. (Pen. Code, § 262(a).)

**In order to have a spouse arrested or prosecuted for rape,** the spousal victim must report the rape to medical personnel, a member of the clergy, an attorney, a shelter representative, a counselor, a judicial officer, a rape crisis agency, a prosecuting agency, a law enforcement officer or a firefighter within one year after the rape. (The reporting requirement does not apply if the victim's allegation of rape is corroborated by independent evidence that would be admissible at trial.) (Pen. Code, § 262(b).)

**If probation is granted upon a conviction of spousal rape,** the conditions of probation may include, in lieu of a fine, one or both of the following requirements: 1) that the rapist make a payment to a battered women's shelter of up to a maximum of \$1,000 (unless to do so would impair the ability to make direct restitution to the victim or to pay for court-ordered child support); or 2) that the rapist reimburse the spouse for reasonable costs of counseling and other reasonable expenses that are the direct result of the rape (the separate property of



the rapist shall be exhausted before community property is to be used for this restitution.) (Pen. Code, § 262(e).)

**Both spousal and non-spousal rape are punishable by imprisonment** in state prison for three, six or eight years. In addition, the judge may assess a fine of up to \$70, depending on ability to pay, that will be used for AIDS education. (Pen. Code, § 264.)

## **Rape by A Date or Ex-spouse**

**Where consent is an issue in certain rape prosecutions**, a current or previous dating or marital relationship is not sufficient to show consent to sexual intercourse. (Pen. Code, § 261.6.)

**Code of Civil Procedure section 372 allows a minor 12 years or older to appear in court without a guardian**, counsel, or guardian ad litem, to seek a protective order against a person with whom she is having a dating or engagement relationship. (See also Fam. Code, § 6301, which provides that minors can be granted restraining orders.)

## **Protecting Yourself Against Acquaintances**

**It has been estimated that in over half of all cases of sexual assault, the rapist is an acquaintance of his victim.** So, you need to be cautious, even with people you know.

- Do not assume that you are safe, solely because you are with someone you know.
- Consider having dates, especially first and second dates, take place in public places.
- Trust your instincts; if you feel uncomfortable in a situation, do something about it.
- Remember you have a right to say **NO** to unwanted sexual advances.

**Communication to use condom or other birth control device.** In certain rape prosecutions, evidence that the victim suggested, requested or otherwise communicated to the rapist that he use a condom or other birth control device, standing alone, is not sufficient to constitute consent. (Pen. Code, § 261.7.)

## **Rape By A Foreign Device Or Instrument**

**It is unlawful to force even the slightest penetration of the genital or anal opening**

of another person by any foreign object, instrument, substance, device, or any unknown object, including a bodily part, such as the penis, or to cause another person to do so for the purpose of sexual arousal, gratification or abuse under all of the circumstances that cause sexual penetration to be rape. This crime is punishable by a sentence of one to eight years in state prison or county jail, depending on the circumstances. (Pen. Code, § 289.)

## **Forced Oral Copulation**

**Forced oral copulation is a crime.** Oral copulation is the placing of the mouth of one person on the sexual organs or anus of another person or assisting someone else to do so. It is a crime under all of the circumstances that cause sexual penetration to be rape. This crime is punishable by a sentence of one to eight years in state prison or county jail, depending on the circumstances. The judge can also impose a fine of up to \$70 for AIDS education, depending on ability to pay. (Pen. Code, § 288a.)

## **Forced Sodomy**

**Forced sodomy is a crime.** A person is guilty of the crime of sodomy if he uses his penis to penetrate, however slightly, the anus of another person under all of the circumstances that cause sexual penetration to be rape. This crime is also punishable by a one-year jail sentence or a three to eight-year state prison term, depending on the circumstances. The judge can also impose a fine of up to \$70 to be used for AIDS education, depending on ability to pay. (Pen. Code, § 286.)

## **Attempted Assault With Intent to Commit Rape**

**Attempted assault with intent to commit mayhem, rape, rape by instrumentality, forced sodomy or forced oral copulation is illegal and punishable by imprisonment in state prison for two, four or six years.** (Pen. Code § 220.)

## **Sexual Battery**

**Sexual battery is a crime.** A person is guilty of sexual battery if he touches the intimate parts (sexual organ, anus, groin, or buttocks of any person, or the breasts of a woman), either directly or through the person's clothing, or causes that person to masturbate or touch the intimate parts of another where:

- The victim is unlawfully restrained by the accused or by an accomplice, and if the touching was against the victim's will, for the purpose of sexual arousal, gratification or abuse; or

- The victim is institutionalized for medical treatment and is seriously disabled or medically incapacitated, if the touching is against the victim's will and for the purpose of sexual arousal, gratification or abuse; or
- The victim is unlawfully restrained, either by the accused or another, or is institutionalized for medical treatment and is seriously disabled or

medically incapacitated; and the touching or masturbation is against the victim's will and for the purpose of sexual arousal, gratification, or abuse.

**This crime is punishable by fines of from \$2,000-\$10,000** or by imprisonment in prison or the county jail for six months to four years, depending on the circumstances. If convicted of a felony for sexual battery or attempted sexual battery, the offender will be ordered to register as a sex offender. (Pen. Code, §§ 243.4 and 290.)

## **Teenage Pregnancy Prevention Act of 1995**

**The Legislature enacted the Teenage Pregnancy Prevention Act of 1995**, that prescribes punishment for unlawful sexual intercourse with a minor, and makes an adult who engages in an act of unlawful sexual intercourse with a minor liable for civil penalties. (Pen. Code, § 261.5.)

## **What You Can Do If You Are Sexually Assaulted**

**Many women are initially overwhelmed at the prospect of facing the medical and legal procedures that follow a rape.** Rapists know this and hope their victims will not report the crime. However, often victims who do report the rape feel stronger by taking positive action to aid law enforcement officers in capturing and prosecuting the rapist. Nonetheless, if you feel you are unable to report the rape to the police, you should take some steps to protect your own mental and physical well-being and that of other potential victims.

The following are law enforcement, medical and counseling resources you can turn to for help after being sexually assaulted.

### **The Police**

**If you are sexually assaulted, you can call the police and receive immediate assistance.** Statistics show that rapists repeat their crimes, so by calling the police

after a rape, you may help catch and imprison a rapist before he rapes someone else.

**When you call the police emergency number and report that you have been raped, you can expect to be asked the following questions by the police dispatcher over the phone:**

- Your name and location.
- Whether you need emergency medical assistance.
- How long ago the assault occurred.
- A brief description of the rapist, his car or other form of transportation, and the direction he was last seen traveling.
- If the rapist had a weapon. This is for the officer's safety in case of an immediate apprehension, and for your own future safety.

**If you feel that it would be easier for you to discuss the attack with a woman, ask the police to send a woman investigator to see you.** Most law enforcement agencies in California will try to provide a female officer for a rape victim upon request. You may also be able to have a friend, relative or counselor from a rape crisis center (See Chapter Nine, Directory of Services, at the back of this handbook) accompany you during the police interview. (Pen. Code, § 679.04 and Evid. Code, § 1035.2.) Bilingual officers may also be available.

**The police department will send an officer to your location to talk to you.** The officer will ask you only general questions about the attack, unless you want to make a **complete** statement at that time. They will gather as much evidence as they can. As part of a follow-up investigation, a police investigator will be assigned to your case to collect evidence and work with you to try to arrest the man who assaulted you. You may request that one of the investigators on your case be a woman. You will be asked to describe the attack and your assailant in detail. **You do not have to discuss your past sexual history.** You do have to discuss past sexual relations you may have had with the man who raped you. However, that alone cannot be used as evidence of consent. You should not be asked if you enjoyed the assault or had an orgasm. You have a right to ask the officers to explain why they are asking you certain questions. You may be asked to view pictures (mug shots) of several men to try to identify the man who raped you.

**The police cannot require you to take a polygraph test (lie detector test).** (Evid. Code, § 351.1.)

## **Medical Help**

**It is very important that you get immediate medical care.** Even if you cannot see any visible signs of injury, you may be suffering from serious internal injuries. Also, you may have contracted venereal disease from the rapist or you may be pregnant. Currently, AIDS tests involve testing for the AIDS antibody, that may not appear until six months after infection. Therefore, if you are worried that you may have contracted AIDS from your assailant, you may want to have an AIDS test done six months after being sexually assaulted. The chance of getting AIDS from a single heterosexual contact with a man is anywhere from 1 in 200 to 1 in 2,000.)<sup>136/</sup>

**There are new California laws that permit you to request that your assailant be given a test to see if he is infected with the human immunodeficiency virus, or HIV, or with AIDS,** when the court finds, after a hearing, or finds that there is probable cause to believe (where no hearing is required) that the accused committed the offense, and that there is probable cause to believe that the HIV virus might have been transmitted to the victim by the accused. In all cases in which the person has been charged with a crime or is the subject of a juvenile court petition alleging the commission of a crime, the prosecutor shall advise the victim of his/her right to make the request, and shall refer the victim to the local health officer for prerequisite counseling. The local health officer shall have the responsibility for disclosing test results to the victim and the accused, subject to applicable confidentiality provisions, although no positive test results shall be disclosed without providing or offering professional counseling. The victim may disclose test results as needed to protect his/her health and safety, or the health and safety, of his/her family or sexual partner. The results of a blood test pursuant to Penal Code section 1524.1 cannot be used in any criminal or juvenile proceeding as evidence of either guilt or innocence. (Pen. Code, §§ 1202.1 and 1524.1.) If the accused is incarcerated, copies of the test shall be sent to the officer in charge and the chief medical officer of the facility where the accused is incarcerated or detained. (Health & Saf. Code, § 121055.)

**Another reason to get immediate medical care is that valuable medical evidence should be collected within 12 hours of the assault, although it can be collected up to 72 hours after the attack.** You do not have to give the medical personnel all of the details of the assault. However, you do have to say you were sexually assaulted, in order to receive proper treatment. Even if you decide not to make a police report, the doctor treating you will collect all possible evidence in case you later change your mind, although you do not have to consent to an examination for evidence of sexual assault, nor is denial of consent grounds for denial of treatment of injuries or for possible pregnancy or venereal disease. (Pen. Code, § 13823.11(c)(3).)

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136. *Morning After Treatment for AIDS*, June 10, 1997, New York Times, pp. B9 and B12.

**If you report the rape to the police and they take you to the hospital or make arrangements to meet you there before the examination, the police department, county, or local governmental agency will pay all or most of the expenses for the medical tests needed for legal evidence. (Pen. Code, § 13823.95.)**

**Other expenses, such as major medical or hospitalization costs, wages lost from inability to work, and psychological counseling, may be reimbursed by filing under the Aid to Victims of Violent Crimes Act. (Gov. Code, § 13959 et seq.; see discussion, *infra*.)**

**You should not wash yourself or your clothes before going for medical treatment.**

Your first instinct after being raped by your assailant might be to cleanse yourself completely and to wash away the entire incident. **DO NOT DO THIS.** Washing your body may remove vital evidence needed for possible conviction of your assailant. While waiting for the police and a counselor from a crisis center to arrive:

- **Do not** wash any part of your body, including your mouth, and **do not** **douche.**
- **Do not** change your clothes. (If you feel you must change your clothes, place each item of clothing removed in a separate bag.)
- **Do not** clean or straighten your house or any other area, if it was the scene of the assault.
- **Do not** touch areas that the rapist may have touched.
- **Do not** destroy or discard your clothing, your underclothes, or sheets and towels you may have used. These items could contain valuable evidence.

**You are not required to make a police report to receive emergency medical treatment.** But every physician, health practitioner employed in a health facility, clinic, physician's office, local or state public health department or clinic in California is required by law to report to a local law enforcement agency, by telephone and writing, the name, address, type of assault, nature and extent of injury and identity of any person allegedly responsible for the injury for each victim of violent crime that they treat. (Pen. Code, § 11160, et seq.) This does not mean that a formal police report is filed. The police cannot take action on your case **until** a report of the rape is made by you.

**You may be able to have a person of your choice present during the medical examination.** (Pen. Code, § 679.04.) Such a person may be a friend or an advocate from a rape crisis center. Local law enforcement is required to notify the local rape victim counselling center whenever a rape victim is transported to a hospital for

examination, if the victim approves of that notification. (Pen. Code, § 264.2.)<sup>137/</sup>

**You will undergo a general physical examination (blood pressure, weight, temperature, ears, eyes, mouth, heart, etc.), a pelvic examination (external pelvic and internal genital), and tests for venereal disease and pregnancy.** The clothing you wore during the assault will be examined, along with foreign materials revealed by examining the clothing. (Pen. Code, § 13823.11.) The doctor may offer you the "morning after pill" (diethylstilbestrol, or DES) or large doses of a birth control pill to terminate a possible pregnancy. However, you should inquire as to possible side effects from DES.

**You may be asked to provide an account of the sexual assault,** which shall include the circumstances of the assault, physical injuries reported, sexual acts reported, whether or not ejaculation is suspected, whether or not a condom or lubricant was used, and a record of relevant medical history. (Pen. Code, § 13823.11(d).)

**The doctor or police may want to take pictures of your injuries as evidence.** They will usually want to wait 24 hours in order for the full effect of the bruises to develop. You can decide who will take the pictures--a social worker, rape crisis advocate, doctor, nurse, or police officer. (Pen. Code, § 13823.11(c)(1)(c).)

**You will be asked to sign a release of evidence form, consent forms, police reports, etc.** If you do not understand what is in the documents, you should ask to have them explained to you. Do not be afraid to ask questions. You have a right to know what you are signing. (Pen. Code, § 13823.11(c)(1) and (2).)

## **Rape Crisis Centers**

**Rape crisis centers are organizations that help women who have been victims of rape or other violent crimes** to get medical assistance and counseling to help cope with the emotional and physical trauma.<sup>138/</sup> (See Chapter Nine, Directory of Services, at the back of this handbook.) You can get the name and phone number

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137. Assembly Bill 807, effective January 1, 1998, provides that the victim shall be given oral or written notice by the provider of any initial medical examination arising out of a sexual assault of his/her right to have a sexual assault victim counselor and at least one other support person of his/her choosing present at the examination. (Pen. Code, § 264.2.)

138. If you are an illegal immigrant to this country, your ability to obtain some of the services mentioned in this handbook if you are the victim of a rape or of domestic violence may be impacted by Proposition 209, or by the newly enacted Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-208, 110 Stat. 2105, 8 U.S.C. § 1601 et seq. (the Welfare Reform Act.) According to the Welfare Reform Act, a battered spouse is considered to be a qualified alien who is eligible for both state and federal emergency and police services.

of the rape crisis center or similar organization in your area from the police, emergency hospital, or your local directory assistance operator.

**When you call the rape crisis center, tell them what happened to you.** These centers generally provide 24-hour telephone counseling, as well as in-person counseling and referral services during normal business hours. Their services are generally free to rape victims. Most centers also provide victims with counselors or advocates who will accompany a rape victim during police interviews, medical examinations, and court proceedings. (Pen. Code, § 13823.15(b).) You have a right to be accompanied by two persons, one of whom may be a witness, who are either friends, relatives or counselors from a rape crisis center, during court proceedings. One of them can accompany you to the witness stand, while the other can remain in the courtroom. (Pen. Code, §§ 868 and 868.5.)

**If you do not want to report the rape to the police, a rape crisis center can do it for you,** without involving you specifically. That way, the police can be alerted to the presence of a rapist in your area.

**Note:** You do not need to have been raped recently to call a rape crisis center, nor do you need to be a woman. Most rape crisis centers offer support services to all survivors of sexual assault: female and male victims, and often to the survivors' spouses or lovers, as well.

## **The Psychological Impact of Rape**

**Most rape victims suffer physical and emotional reactions that continue for months after the rape occurred.** Rape counselors have noted three stages of a "rape trauma syndrome" that affect most rape victims. In the first state (lasting anywhere from one week to three months), victims often feel loss of control, shame, fear of dying, physical pain, inability to sleep, depression, and other symptoms of severe trauma. The second stage, or reorganizational phase, may last a year or longer. It is often characterized by minor or major adjustments in lifestyles, that are motivated by fear (changing jobs, quitting school, moving). The third stage is the reintegration stage. (See description in *People v. Bledsoe* (1984) 36 Cal.3d 236, 241-243.)

**Many rape victims have been helped by mental health professionals and counselors** to overcome most of their negative symptoms and reactions after a rape. It is important for any victim of a rape or other violent crime to seek all available help.

## **Financial Assistance is Available to Victims of Rape and Other**



## Violent Crime

**Under the Aid to Victims of Violent Crimes Act**, the state provides compensation of up to \$23,000 to victims of violent crimes,<sup>139/</sup> their dependents, family members, or persons in close relationship with the victims, if they suffer monetary losses incurred as a result of the crime for which they will not be reimbursed from any other source for medical or medically-related expenses; out-patient psychiatric, psychological or other mental health counseling-related expenses; loss of income or support; nonmedical remedial care and treatment; or family psychiatric, psychological or mental health counselling. Funds for retraining are also available. (Gov. Code, § 13965 (a)(4).) An application must be filed with the Board of Control within one year after the date of the crime, or one year after the victim attains the age of 18 years, whichever is later. (Gov. Code, § 13961(c).) A higher amount may be payable if matching federal funds are available. Attorneys' fees of up to 10% of the award or \$500, whichever is less, for each victim or derivative victim, may also be available. (Gov. Code, §§ 13960 and 13965.) Attorney's fees may also be awarded pursuant to Government Code section 13969.1.

**To receive this state compensation**, you must have suffered physical or emotional injury as a result of a violent crime. Generally, you must have been a California resident when the crime occurred, or be military personnel, or be living with military personnel stationed in California. (Gov. Code, § 13960.) However, nonresidents who suffer monetary losses as a direct result of criminal acts occurring in California may also be compensated, if there are federal funds available. (Gov. Code, § 13960.5) Emergency awards of up to \$1,000 may be made if the victim incurs loss of income or support or requires emergency medical treatment. (Gov. Code, § 13961.1.) In cases of a victim's death, the heirs may have rights to this compensation for financial losses to the deceased.

**Courts can order income deductions and issue bench warrants for failure to pay fines and restitution, and order the obligor to be imprisoned** until the money is paid. (Gov. Code, § 13967.2 and Pen. Code, § 1205 et seq.)

**A victim of any crime, including domestic violence**, may not receive compensation if he/she refuses to cooperate with the police in apprehending and prosecuting the assailant (Gov. Code, § 13962(c)), or if he/she is a convicted felon who has not yet

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139. The total amount payable to all "derivative victims" (parents, siblings, spouse or children of the victim; persons living in the household of the victim at the time of the crime; a person who had previously lived in the household of the victim for a period of not less than two years in certain specified relationships; or another family member of the victim, including the victim's fiancé, who witnessed the crime) for loss of support as a result of the crime, is \$46,000. (Gov. Code, § 13965(a)(7).)

been discharged from parole or probation (Gov. Code, § 13960.2), or if he/she knowingly and willingly participated in committing the crime in connection with which he/she is seeking compensation. (Gov. Code, § 13964(c).)<sup>140/</sup> You are entitled to have support persons attend the board hearing held to determine if you are entitled to this compensation if the application the board is considering is the result of a crime against a minor, a crime of sexual assault, or a crime of domestic violence. (Gov. Code, § 13963.1.)

**Information and application forms for compensation to victims of violent crimes may be obtained from the state Board of Control** in Sacramento, a local victim witness assistance program, or the police, sheriff's department, or other law enforcement agency involved.

For more information, contact:

Victims of Violent Crimes Division  
California Board of Control  
630 K Street  
Sacramento, California 95814-3301  
P.O. Box 3036  
Sacramento, California 95812-3036  
(916) 322-4426

## **The Legal Process**

**A prosecuting attorney in the district attorney's office will be assigned to review your case.** The attorney can explain the legal procedures for prosecution to you and will tell you what testimony you would be required to give and how often you might have to appear in court. Counselors and lawyers with rape crisis centers and victim witness assistance programs can also explain legal procedures to you.<sup>141/</sup>

**If you were attacked by your spouse or someone you know, you can have a temporary restraining order issued, if you are afraid your assailant will continue to**

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140. A "derivative victim" can also be denied assistance if she knowingly and willingly participated in the commission of the crime, or failed to cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

141. Assembly Bill 807 amended Penal Code section 264.2 to provide, effective January 1, 1998, that prior to the commencement of any initial law enforcement interview or district attorney or defense attorney contact (including investigators or agents employed by them), the victim shall be notified orally or in writing that she has the right to have victim advocates, as well as a support person of her choosing, present at the interview or contact.

**harass you.** (Code Civ. Proc., § 527.6; Fam. Code, §§ 6215 and 6218 et seq.)

## **If the Suspect is Arrested**

**If your attacker is arrested, the deputy district attorney will decide whether to issue a formal complaint against him.** This decision is based on the strength of the evidence against the suspect.

**The suspected rapist has a right to a defense attorney during all legal proceedings.** The suspect may be assigned an attorney from the public defender's office to represent him on the case. The public defender may assign an investigator to work on the case.

**You are not obligated to speak with the defense attorney or his/her investigator, or anyone else about your case until you are in court.** (*Walker v. Superior Court* (1957) 155 Cal.App.2d 134, 139-140.) However, your name and address must be disclosed to the defendant and the defense cannot be precluded from contacting you in the absence of a showing of good cause (threats or possible danger to the safety of the victim or witness, possible loss or destruction of evidence, or possible compromise of law enforcement investigation, or actual harassment). (*Reid v. Superior Court* (1997) 55 Cal.App.4th 1326.) If you choose to answer an attorney's or investigator's questions, you may have another person present with you, if you wish. (Pen. Code, § 679.04.) You should also notify the deputy district attorney. You should always ask for identification and an explanation of the purpose from anyone contacting you about the case.

## **If the Suspect is Charged with Rape**

**Once the suspect is formally charged, he is called a defendant.** Before the actual trial, the court, through a magistrate, conducts a hearing, called a preliminary hearing, to determine whether the prosecutor has enough evidence to show that the rape was committed and that the defendant is probably the one who committed the rape, so that he may be tried for the rape. (Pen. Code, § 859, et seq.)

**Proposition 115 (the Crime Victims Justice Reform Act), that became effective June 5, 1990,** allows certain hearsay testimony by law enforcement officers having specified experience or training to be introduced at the preliminary hearing to show probable cause to try a person for rape. This portion of Proposition 115, (that amended Evid. Code, § 872(b)), was upheld against a constitutional challenge in *Whitman v. Superior Court* (1991) 54 Cal.3d 1063. Thus, your testimony may not be

needed at the preliminary hearing. The deputy district attorney prosecutes the case on behalf of the people of California and not on behalf of you directly, because a rape, like any other violent crime, is considered a crime against the state. The decision to prosecute, accept a plea bargain or drop the case is up to the district attorney, not the victim.

**After the evidence is heard at the preliminary hearing, the magistrate will decide whether to send the case to superior court for a trial.** If the judge does not believe there is enough evidence, the charges will be dropped, and the suspect will be released. (Pen. Code, § 859, et seq.)

## **The Trial**

**If there is a trial, it may take place several months after the rape.** The prosecutor will contact you to prepare you for trial.

**At the trial, witnesses are permitted in the courtroom only when they are testifying, if the defense attorney has asked that witnesses be excluded from the courtroom.** The judge shall also order the witnesses not to converse with each other until they are all examined, and may order, where feasible, that the witnesses be kept separated from each other until they are all examined. (Pen. Code, § 867.)

**You may ask the district attorney to request that you be allowed not to give your name, address and telephone number when you testify,** except that your name must usually still be provided to the defense during discovery proceedings before trial. (Pen. Code, §§ 1054-1054.7.)<sup>142/</sup> (Cf. *People v. Watson* (1983) 146 Cal.App.3d 12.) Penal Code section 293.5, that allows the complaining witness in a sex crime case to testify anonymously, if necessary to protect her privacy and if it will not unduly prejudice the prosecution or the defense, has been held not to violate the defendant's constitutional rights by the Court of Appeal in *People v. Ramirez* (1997) 55 Cal.App.4th 47. (See also Evid. Code, § 352.1.)

**You have a right to have two persons of your choosing at the trial, one of whom**

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142. Government Code section 6254(f)(2) provides that your name may be withheld from public record disclosure at your request. Penal Code section 293 prevents members of law enforcement agencies, but not the prosecution, from making public the name and address of a reported sex offense victim who requests anonymity, except to other authorized agencies. The Hayden and Frusetta Witness Protection Act of 1997 amends Penal Code section 1054.2, effective January 1, 1998, and prohibits attorneys from disclosing the address or telephone number of a victim or witness to members of the defendant's family or anyone else, with certain exceptions, unless the court, after a hearing and upon a showing of good cause, orders the information released. (Assem. Bill No. 207, 1997-1998 Reg. Sess.)

**may be a witness, to provide you with moral support.** One can accompany you to the witness stand, while the other can remain in the courtroom. (Pen. Code, §§ 868 and 868.5.)<sup>143/</sup>

**At the trial, you will be questioned by the deputy district attorney and the defendant's attorney.** They will be able to ask you about any prior sexual relations you may have had with the defendant. (Over half of all rapes are committed by a man known to the victim.) However, they will not be able to ask you questions about your sexual conduct with persons other than the defendant in order to prove you consented to the defendant's acts. Your prior sexual history with persons other than the defendant is not admissible to prove consent, although it may be admitted into evidence if the defense attorney convinces the court that it is relevant to your credibility. (Evid. Code, §§ 780, 782 and 1103.) The defendant's attorney cannot order you to submit to a psychiatric or psychological examination for the purpose of assessing your credibility. (Pen. Code, § 1112.)<sup>144/</sup> The Ninth Circuit upheld a court's refusal to compel juvenile victims of sexual assault to undergo psychiatric evaluations. (*Gilpin v. McCormick* (9th Cir. 1990) 921 F.2d 928.)

**Newly enacted Evidence Code section 1108,**<sup>145/</sup> allows evidence of past sexual offenses of the defendant to be used in court to show the defendant's propensity to commit the sexual assault, if the value of the evidence is outweighed by its prejudicial effect on the defendant. (See also *People v. Zack* (1986) 184 Cal.App.3d 409, 413-414, (court held that prior uncharged assaults on the same victim are admissible for the purpose of establishing motive for murder and identity of murderer); and *People v. Linkenaugher* (1995) 32 Cal.App.4th 1603, (evidence could be admitted of prior abuse incidents to establish identity of accused murderer).)

**If the defendant is found not guilty, he will be released immediately.** A finding of not guilty means that there was not enough evidence for the jury, or the judge, if it was not a jury trial, to believe that the rapist was guilty "beyond a reasonable doubt."

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143. Penal Code section 868.5 has been upheld against a challenge that it creates an improper inference that the trial court believes that the alleged victim is an actual victim. (*People v. Adams* (1993) 19 Cal.App.4th 412, 437.)

144. However, Penal Code section 1112 does not affect the admissibility of psychiatric testimony concerning the mental state of the complaining witness in a case involving a sexual assault. (*People v. Hagerman* (1985) 164 Cal.App.3d 967, 974.)

145. The Court of Appeal upheld the constitutionality of Evidence Code section 1108 in *People v. Fitch* (1997) 55 Cal.App.4th 172, rejecting claims that it violated the due process, equal protection or ex post facto clauses.

**If the defendant is convicted, he will be sentenced approximately 30 days later at a sentencing hearing.** (Pen. Code, §§ 12-13 and 1191.)

**After the trial, the deputy district attorney should call you and tell you the outcome of the case and what will happen to the defendant.**

**If the defendant is convicted, you may be contacted by a probation officer, so that your comments about the rapist can be reported to the judge at the time of sentencing,** although the court may direct the probation officer not to obtain your statement if you testified at any of the court proceedings. (Pen. Code, § 1203(h).) If you desire, you, or up to two of your parents or guardians, if you are a minor, may be allowed to testify in person at the sentencing hearing to express views concerning the crime, the person responsible, and the need for restitution. The court shall consider these statements and state on the record its conclusion concerning whether the person would pose a threat to public safety if granted probation. (Pen. Code, § 1191.1.) Under certain circumstances, these statements may be videotaped or recorded by other means. (Pen. Code, § 1191.16.)

**The prosecutor, the victim, and specified relatives of the victim have the right to appear in person at the defendant's parole hearing** or by video teleconference. (Pen. Code, §§ 3041.7, 3043, 3043.2 and 3043.25.)

**The probation officer shall provide adequate notice to the victim** or his/her parents or guardians or next of kin, where relevant, of all sentencing proceedings regarding the defendant, and shall also provide information concerning the victim's right to civil recovery against the defendant, the requirement that the court order restitution for the victim, the victim's responsibility to furnish information regarding her losses, and the victim's opportunity to be compensated from the Restitution Fund, if eligible. (Pen. Code, § 1191.2.)

**Inmates released on parole shall not be returned to within 35 miles** of the victim's or witness's place of residence if the victim or witness has requested the additional distance, and there is a need to protect her life, safety, or well-being. (Pen. Code, § 3003 (f).) Victims are also required to be notified of an inmate's release date, placement in a reentry or work furlough program, or of his escape from a Department of Corrections facility. (Pen. Code, §§ 3058.8 and 11155.)

**California has a Sexually Violent Predators Act** (Welf. & Inst. Code, § 6600 et seq.), which provides that certain violent sexual predators can be locked up indefinitely in mental hospitals after they finish their prison sentences, if they have a diagnosed mental disorder. The United States Supreme Court recently upheld the constitutionality of a similar statute in the case of *Kansas v. Hendricks* (1997)\_\_\_U.S. \_\_\_, 117 S.Ct. 2072. The constitutionality of the California statute will be decided

by the California Supreme Court, which has accepted several cases on this issue.<sup>146/</sup>

## Precautions

**Unfortunately, no one can prevent rape, but listed below are some general** precautions women can take to reduce the risk of being a victim of a rape or other violent crime. If you are a victim of rape or other violent crime, there are people to help you.

### Protecting Yourself At Home

- Keep all exterior doors and windows securely locked.
- All entrances and hallways should be well-lighted.
- Hang curtains and/or blinds on all windows.
- Be aware of places attackers might hide, both inside and outside.
- **Never** open the door to a stranger. Install a peephole in your front door.
- If you live alone or with other women, don't put your full name on your mail box or in the phone book; use your first initial only. Avoid publicizing that you live alone.
- Keep your garage locked.
- Leave a light on when you go out.
- When you return home, if there is any sign of an intruder or forced entry, seek help. **DO NOT ENTER ALONE.**
- Take a self-defense class or a class in the use of tear-gas or pepper spray. There are many self-defense classes designed for women.

### Protecting Yourself On The Street

- Walk in well-lighted areas.
- Avoid walking alone.
- Walk at a steady pace - look confident and purposeful. Know where you are going. Do not look lost.

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146. *Garcetti v. Superior Court*, Case No. S057336, review granted February 5, 1997, *People v. Superior Court (Cain)*, Case No. S057272, review granted February 5, 1997, *Hubbart v. Superior Court*, Case No. S052136, review granted February 26, 1997; seven additional cases granted review on October 29, 1997: *People v. Hedge*, Case No. D026713, *People v. Donnell*, Case No. D026742, *People v. Harmon*, Case No. D026867, *People v. Badger*, Case No. D026868, *People v. Roberge*, Case No. D027104, *People v. Blevins*, Case No. D027221, and *People v. Crane*, Case No. D027701; and *People v. Putney*, Case No. 5065144, review granted December 26, 1997.

- Be familiar with your own frequently used route. Vary your route home.
- Try to keep your hands free.
- Listen for footsteps and voices nearby. Be alert to discover if someone is following you. If you think someone is following you, cross the street or walk in the middle of the street, stay near street lights, or go into a store or office where people are working.
- If you fear danger, scream loudly or yell "FIRE." ("Fire" is a threat to which almost everyone will respond.) Get to a lighted place fast. Run and yell.
- Carry a whistle wrapped around your wrist or on your key chain. Use it.
- If you are walking outside, stand in a balanced position. Be suspicious of cars that pull up near you or keep passing you.
- If a car is following you, turn around and walk in the reverse direction.
- Dress for freedom of movement. Wear sensible shoes that allow you to run.
- Walk on the outside of the sidewalk, away from possible hiding places.
- Have your car key out and ready to use when you go to your parked car.
- Check the interior of your car before you get in. Always keep car doors locked when parked and driving.
- Always carry enough money for an emergency whenever you go out.
- Carry a flare in your car for emergencies.
- Drive to a police station if you are threatened while in your car.

## **Protecting Yourself In Your Neighborhood**

**Pursuant to the federal "Megan's Law," local police departments may disclose to the community the criminal background of a registered sex offender considered to be a continuing danger.** (42 U.S.C. § 14071(d).)<sup>147/</sup> The New Jersey version of Megan's Law has been upheld against a constitutional challenge arguing that it is an ex post facto law, that it constitutes double jeopardy, that it is an unlawful bill of attainder, that it constitutes cruel and unusual punishment, and that it violates the registrant's constitutional privacy rights, although the court indicated that a hearing must be held before the public is notified, in order to protect the registrant's due process rights. (*Doe v. Poritz* (Sup.Ct. N.J. 1995) 662 A.2d 367.)

## **The Second Circuit Court of Appeals upheld New York's and Connecticut's**

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147. The law was enacted following the 1994 rape and murder of a 7-year old girl named Megan by her neighbor, a recently paroled sex offender.



**versions of Megan's Law** against ex post facto constitutional challenges. (*Doe v. Pataki* (2nd Cir. 1997) 120 F.3d 1263, and *Roe v. Office of Adult Probation* (2nd Cir. 1997) 125 F.3d 47.) The First Circuit Court of Appeals upheld New Jersey's version of Megan's Law against an ex post facto challenge and a double jeopardy clause challenge. However, the court held that requirements that schools, community organizations and persons likely to come into contact with an offender be notified violate the due process clause unless the offender is given an opportunity to challenge the notification and prosecutors during a hearing can prove by clear and convincing evidence that such notification is required. (*E.B. v. Verniero* (3rd Cir. 1997) 119 F.3d 1077.) The Ninth Circuit recently upheld Washington state's version of Megan's Law, finding that paroled sex offenders suffered no additional punishment when the public was told of their whereabouts. (*Russell, et al. v. Gregoire, et al.* (9th Cir. 1997) 124 F.3d 1079.)

**In 1947, California implemented the nation's first sex offender registration program** to help track the whereabouts of persons convicted of specific sex crimes. The registration requirement is for life, unless the offender is relieved of this responsibility through legal processes. In 1996, California enacted its own version of "Megan's Law to implement the federal law," that provides the public with photographs and descriptive information on serious sex offenders residing in California, who have been convicted of committing sex crimes and are required to register their whereabouts with local law enforcement. The cost for calling 1-900-463-0400 is a flat rate fee of \$10 for information on up to two individuals. (Pen. Code, §§ 290 et seq.)<sup>148/</sup>

**To use the 900 line, you must be at least 18 years of age**, and you must provide the following information about the person you are checking: the name of the person and one of the following: an exact address or exact date of birth or California driver's license number, identification number or social security number. If you only know the person's name, you will need to provide a complete description of the person.

**The Megan's Law CD-Rom provides another means to obtain information on California's more than 64,000 serious sex offenders.** A CD-ROM, now available for public viewing, provides the following information about serious sex offenders: registrant's name, aliases, photograph (if available), sex, physical description, including scars, marks and tattoos, registered sex offenses, county of residence, and ZIP code, based on last registration. To view the CD-ROM, you must be 18

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148. The first constitutional challenge to California's sex-offender notification law was filed recently, alleging that a person subjected to it is denied his right to privacy, equal protection, freedom from harassment and freedom from unjust persecution. (*Markvardsen v. Lungren*, Case No. C97-3197TEH.)

years of age or older, provide a California's driver's license or identification card, sign a statement that you are not a registered sex offender, that you understand that the purpose of the release of information is for the public to protect themselves and their children from sex offenders, and that it is illegal to use the information to harass, discriminate against or commit a crime against any registrant, and state a distinct purpose for viewing the CD-ROM, if required by local law enforcement. Contact your local law enforcement agency to obtain information on where and when you can view the CD-ROM.

You may also receive information about serious sex offenders through your local law enforcement agency or your neighborhood school, or view the Attorney General's Home Page:

<http://www.caag.state.ca.us>.

## **Protecting Yourself When Hitchhiking**

**Avoid hitchhiking whenever possible.** Arrange a ride with a friend or borrow a friend's car. Use public transportation, or join a car pool. If you must hitchhike:

- Try to get a ride with a woman.
- Avoid hitchhiking alone.
- Check the license plate number and write it down before getting into the car.
- Check to see that no one is hiding in the car, and that the driver is the only occupant.
- Become familiar with the vehicle make, model, color, etc.
- Be sure the door handle on the passenger's side works before getting in.
- Do not get into the back of a van or a 2-door car.
- Do not get in the car of someone who you think has been drinking.
- Ask the driver's destination and determine if it is where you want to go.
- Try to make sure it is a safe ride before putting any of your possessions into the car or trunk.
- Look closely at the driver so you can later identify him/her.
- Do not talk openly about yourself or give your home address or telephone number.
- Do not allow the driver to take you to your home; get out of the car at least a block away.
- Hitchhike in an area where there is ample pull-off space.
- If you feel uncomfortable about the situation, do not get into the car.

## **STALKING**

**Any person who willfully, maliciously, and repeatedly follows** or harasses another person and who makes a credible threat with the intent<sup>149/</sup> to place that person in reasonable fear for his/her safety or the safety of his/her family, is guilty of the crime of stalking. This crime is punishable by imprisonment in county jail for not more than one year or by a fine of not more than \$1,000, or by both that fine and imprisonment, or by imprisonment in state prison. The defendant, if convicted of felony stalking, may be required to register as a sex offender. If probation is granted, the defendant must usually participate in a counselling program. (Pen. Code, § 646.9.)

**When there is a conviction for this crime, the court must consider issuing an order restraining the person convicted from any contact with the victim for up to ten years.**<sup>150/</sup> Any person who violates such an injunction or order shall be punished by imprisonment in state prison for two to four years. The fact that the person is in jail shall not be a bar to prosecution for this crime. (Pen. Code, § 646.9 (b).)

**Civil Code section 1708.7 establishes a tort (civil law claim) of stalking**, that subjects a stalking defendant to liability for general damages, special damages, and punitive damages. While prosecutors will not directly use this statute, it is important to advise the victim that one option is a civil suit under this section.

**Penal Code section 1270.1 provides that a hearing is required** before a person charged with a specified stalking offense is released on bail that differs from the bail set in the uniform county-wide bail schedule, or is released on his/her own recognizance. The Department of Corrections, county sheriff, or director of a local department of corrections is required to give a 15-day notice to a victim, victim's family member, or witness to the offense, of the release from state prison or county jail of a person convicted of stalking. (Pen. Code, § 646.92.)

## **Advice to Stalking Victims**

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149. Penal Code section 646.9(g) provides that it is not necessary to prove that the defendant had the intent to actually carry out the threat. Penal Code section 646.9(b) increases the punishment for stalking when the defendant is the subject of a protective order and stalks the petitioner. The Court of Appeal recently upheld the validity of Penal Code section 646.9 against a claim that it was unconstitutionally vague in *People v. McClelland* (1996) 42 Cal.App.4th 144. (See also *People v. Heilman* (1994) 25 Cal.App.4th 391.)

150. Assembly Bill 350 added Section 6254 to the Family Code and Section 646.91 to the Penal Code, effective January 1, 1998. These new sections will authorize a judicial officer to issue an ex parte emergency protective order where a peace officer asserts reasonable grounds to believe that a person is stalking another person. Intentional disobedience of such an order can be punishable as contempt of court or as felony stalking.

1. Stop all contact with the stalker.<sup>151/</sup>
2. Don't use any third party to intervene, unless it's law enforcement.
3. Obtain a restraining order.
4. Get a new unlisted phone number and change your old number, or keep it attached to an answering machine to collect evidence of the stalking.
5. Alter work hours, routes to and from work, and parking places.
6. Advise your employer and co-workers of the problem and provide a picture of the defendant. If he shows up at work, call the police and avoid contact with him.
7. Keep a diary of any and all attempts to contact you. Note dates, times, and the presence of any other witness. If the defendant is violating a restraining order, call the police immediately and make a report.
8. Save all evidence, including notes, letters and phone messages.
9. If hang up calls are being made to your number at home or work, consider asking for installation of a phone tap or call-back feature, that will indicate the phone number of the person calling. (If the caller has not asked that his caller identification number be blocked, this may also enable you to identify him.)
10. Avoid places the defendant knows you frequent.
11. If you have children in common, arrange through the court for the exchange of custody or visitation through a third party.
12. If possible, move to a new address with a roommate and have the bills placed in the roommate's name; ask that your address be kept confidential by the Department of Motor Vehicles, pursuant to Vehicle Code section 1808.21.
13. Discuss with an investigator, advocate or district attorney a specific safety plan, if the defendant finds you.

## **Safety Plan**

### **The safety plan should include the following:**

1. Police emergency phone number and numbers to crisis hotlines.
2. Lists and numbers of shelters and safe places where victims can stay.

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151. The Court of Appeal ruled in *People v. Gams* (1997) 52 Cal.App.4th 147, that consent to sex by a man's ex-girlfriend did not bar his conviction for stalking her in violation of a court order. Only the court could lift the protective order because consent by the victim is often illusory, due to a condition known as "learned helplessness." (See also Pen. Code, § 13710(b), which states that the terms of a protective order remain enforceable, notwithstanding the acts of the parties.)

3. Restraining order information.
4. Emergency cash, credit cards, checks, etc., on hand to allow for the payment of emergency needs.
5. Clothing and personal items packed and ready to go at all times. Make sure that important papers are included, such as children's birth certificates.
6. A second set of keys.
7. Systems and codes to be used with family, friends, professionals, neighbors, etc. These will warn them that you need help.
8. Change locks on doors and windows.

## **GENDER-BASED HATE CRIMES**

### **The Ralph Act**

**The Ralph Act, Civil Code sections 51.7 and 52**, provides that it is a civil right to be free from violence or the threat of violence to the person or to property because of a person's sex, inter alia. It provides for civil penalties of up to \$25,000 for perpetrators, civil remedies to victims of up to three times actual damages, but no less than \$1,000, punitive damages, injunctive relief and attorneys' fees. It is enforced by the Department of Fair Employment and Housing, the Fair Employment and Housing Commission, the California Attorney General's office, any district or city attorney, and private attorneys.

### **The Bane Act**

**The Bane Act, Civil Code section 52.1**, provides protection from interference by threats, intimidation, or coercion or for attempts to interfere with someone's state or federal statutory or constitutional rights, on the basis of sex, among other bases. It provides for civil penalties for perpetrators, civil remedies to victims of up to three times actual damages, but no less than \$1,000, punitive damages, injunctive and other equitable relief and attorneys' fees. It is enforced by the California Attorney General, any district or city attorney or, a private attorney.

**Various other penal code statutes provide for punishment for gender-based hate crimes.** Penal Code section 422.6(a) provides that it is a misdemeanor to interfere by force, or the threat of force, with a person's constitutional rights because of her gender, inter alia. The penalty is up to a one-year jail sentence or a \$5,000 fine, or both. Penal Code section 422.6(b) provides that it is a misdemeanor to damage a person's property because of her gender, inter alia. (This carries the same penalty as the preceding section.) Penal Code section 422.7 provides that actions that are normally misdemeanors can become felonies if committed because of the victim's

gender, inter alia. (The penalty is up to one year in jail or prison and/or a \$10,000 fine.) Finally, Penal Code section 422.75 provides for sentencing enhancements of one to three years for certain bias motivated felonies against a person on the basis of her gender, inter alia.

## **Violence Against Women Act of 1994**

**The Violence Against Women Act of 1994**<sup>152/</sup> (VAWA, Pub. L. 103-322) established for the first time a federal civil right<sup>153/</sup> to be free from crimes of violence motivated by gender, and provided a cause of action in either federal or state court to any victim of gender-motivated violence for unlimited compensatory<sup>154/</sup> and punitive damages, injunctive relief, declaratory relief, attorneys' fees, and whatever else the court deems appropriate, such as counseling for the abuser.

**The VAWA also provides a variety of measures designed to produce safe streets and homes for women, and equal justice for women in the courts.**

**In addition to its civil rights provisions, the VAWA does the following:**

- 1) Increases federal penalties for sex crimes and repeat sex offenders and imposes mandatory restitution for federal sex crimes enforceable through suspension of federal benefits;
- 2) Provides \$1.62 billion through the year 2000 for a variety of programs to combat violence against women, including funding for battered women shelters;
- 3) Creates new evidentiary rules to determine the admissibility of the alleged victim's past sexual behavior or alleged sexual disposition;<sup>155/</sup>

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152. The VAWA has been upheld against constitutional attack in five cases (*U.S. v. Bailey* (4th Cir. 1997) 112 F.3d 758, *Doe v. Doe* (D. Conn. 1996) 929 F.Supp. 608, *U.S. v. Gluzman* (S.D. N.Y. 1997) 953 F.Supp. 84), *Doe v. Hartz* (N.D. Iowa 1997) 970 F.Supp. 1375, and *Seaton v. Seaton* (E.D. Tenn. 1997) 971 F.Supp. 1188, but two other courts have ruled that Congress did not have the authority to enact the VAWA under the Commerce Clause or under the enforcement clause of the Fourteenth Amendment. (*U.S. v. Wright* (D.Neb. 1997) 965 F.Supp. 1307; and *Brzonkala v. Virginia Polytechnic and State University* (W.D. Va. 1996) 935 F.Supp. 779.)

153. Plaintiffs can take advantage of the more relaxed burden of proof in civil actions (preponderance of the evidence) than in criminal trials (beyond a reasonable doubt), as well as nationwide service of process, favorable evidence rules, and pre-trial detention options.

154. The abuser can be ordered to compensate the victim for all harm resulting from his attack, including income lost from missed days of work, medical expenses, and mental health care.

155. Rule 404 of the Federal Rules of Evidence allows a plaintiff to produce evidence of the prior bad acts of the perpetrator to show motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

- 4) Authorizes the U.S. Attorney General to develop model legislation to protect confidentiality between victims of sexual assault or domestic violence and their counselors;
- 5) Requires the U.S. Postal Service to protect the confidentiality of the addresses of domestic violence shelters and abused persons;
- 6) Authorizes the creation of a national domestic violence hotline;
- 7) Creates model programs and demonstration programs to educate youth and help communities fight domestic violence;
- 8) Facilitates the creation of databases, statewide and national, on the incidence of sexual and domestic violence and stalking;
- 9) Provides for education of the state and federal judiciary to eliminate gender bias and to make the judiciary more aware of the issues specific to gender-based violence;
- 10) Permits battered immigrant spouses and children of U.S. citizens and legal residents who have immediate relative status to self-petition for legal resident status and public benefits, and to proceed with their petition without the cooperation of the battering U.S. citizen spouse if they no longer live with the batterer and public assistance is necessary for their survival;<sup>156/</sup>
- 11) Provides for pretrial detention in sex offense cases;
- 12) Provides for increased penalties for sex offenses against victims younger than 16;
- 13) Provides for testing for sexually-transmitted diseases for victims of sexual offenses and limited HIV testing of defendants;
- 14) Contains measures to reduce domestic violence and stalking;
- 15) Creates interstate protections for victims of domestic violence by providing that permanent, temporary and ex parte restraining orders from one state are enforceable in all 50 states if the order provided the defendant with reasonable notice and an opportunity to be heard in a manner consistent with due process (18 U.S.C. § 2265); and
- 16) Provides that federal criminal penalties can be obtained against a person who travels across state lines (or leaves or enters an Indian reservation) with the intent to injure his spouse or intimate partner and then does so, (18 U.S.C. § 2261(a)(1); or who causes, by force, coercion, duress or fraud, an intimate partner or spouse to cross state lines (or leave or enter an Indian reservation) if the force or

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156. See 8 U.S.C. § 1254(a)(3). However, passage of the Personal Responsibility and Work Opportunity Act of 1996 limited some of the benefits provided to immigrants and other battered women by the VAWA. In response to the concern that the new law undermined battered women's efforts to get help, the Family Violence Option, or Wellstone Amendment, was passed as an amendment to the 1996 welfare bill. This amendment allows each state to temporarily waive any number of requirements if a welfare recipient has been a victim of domestic violence. The California Legislature is currently considering two bills that would provide the Family Violence Option, Senate Bill No. 1185 (1997-1998 Reg. Sess.) and Senate Bill No. 341 (1997-1998 Reg. Sess.)

coercion leads to physical harm to the victim (18 U.S.C. § 2261(a)(2)); or to cross state lines (or leave or enter an Indian reservation) with the intent to stalk or harass another person, that placed the victim in reasonable fear of death or serious bodily injury to herself or a member of her immediate family (18 U.S.C. § 2261A); or to cross state lines (or leave or enter an Indian reservation) with the intent to violate a valid protection order and to actually violate an order protecting the victim against credible threats of violence (18 U.S.C. § 2262(a)(1); or to cause an intimate partner or spouse to cross state lines (or leave or enter an Indian reservation) by force, coercion, duress or fraud during which, or as a result of which, there is bodily harm to the victim in violation of a valid order of protection (no showing of specific intent is required) (18 U.S.C. § 2262(a)(2). (Penalties for violations of sections 2261, 2261A and 2262 hinge on the extent of bodily injury to the victim; terms of imprisonment range from five years for bodily injury, and up to life if the crime of violence results in the victim's death.)

**By far the most important section of the VAWA is Subtitle C**, the Civil Rights Remedies for Gender-Motivated Violence Act, that declares that all persons within the United States have the right to be free from "crimes of violence" motivated by gender. (42 U.S.C. § 13981 et seq.) "Motivated by gender" means a crime of violence committed because of gender or on the basis of gender and due, at least in part, to an animus based on the victim's gender.<sup>157/</sup> Although the name of the bill implies otherwise, the VAWA covers gender-based violence affecting both men and women.

**The VAWA defines "crimes of violence" as an act or series of acts that would**, under either state or federal law, constitute a felony against the person or against property if the conduct presents a serious risk of physical harm to another.<sup>158/</sup> The kinds of crimes that could be covered include rape, sexual assault, nonsexual assault, and domestic violence, if the violence rises to the level of a felony.

**It does not matter, under the VAWA, whether or not the gender-motivated violent acts** have actually resulted in criminal charges, prosecution, or conviction, and whether or not those acts were committed on federal lands. Random violent acts that are unrelated to gender, as well as acts that cannot be demonstrated by a

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157. According to one commentator, a defendant's statements before or after the attack, his use of pornography, prior similar acts by the defendant, the severity of the attack, or the location of the attack may be admissible evidence that may help prove gender motivation, and expert witness testimony may also be presented. (*Frazee, Gender-Justice Breakthrough* (Fall 1995) *On the Issues: the Progressive Women's Quarterly*.)

158. The VAWA focuses on the substantial risk, or potential for physical force, so that the victim would not need to incur severe physical injury to bring a cause of action.



preponderance of evidence to be gender-motivated, are not covered.

**Under the VAWA, the victim of gender-motivated violence can pursue a civil** cause of action against the assailant (including a person acting in an official capacity of any state) in state or federal court. The VAWA does not confer on federal courts, however, jurisdiction over marital dissolutions, alimony, equitable distribution of marital property, or child custody. Also, the VAWA does not provide grounds for removal to federal court for civil actions already filed in state court.

**The VAWA contains a four-year statute of limitations.** In other words, plaintiff must file her complaint within four years of the commission of the abuse. (However, the abuse must have occurred after the effective date of the VAWA, which was enacted September 13, 1994.)

## DOMESTIC VIOLENCE

**Domestic violence is a major concern in California and in the United States.** In 1988, according to the federal Bureau of Justice, 53% of female homicide victims were killed by their male partners. Domestic violence is the single major cause of

injury to women, causing injury more frequently than auto accidents, rapes and muggings combined.<sup>159/</sup>

It has been reported that thirty percent of all women will suffer from some form of violence in an adult relationship.<sup>160/</sup> A 1997 study released by the United States Justice Department indicates that, in 1994, a quarter-million people were treated for injuries inflicted by an intimate partner.<sup>161/</sup> Domestic violence is particularly harmful to children. Fifty percent of batterers are violent to their partner during pregnancy.<sup>162/</sup> Approximately 10 million children may witness their mother being assaulted every year in the United States.<sup>163/</sup> When women are murdered by their

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159. *Domestic Violence Intervention Calls For More Than Treating Injuries*, *Journal of the American Medical Association* (1990).

160. *Rodgers, Wife Assault: The Findings of a National Survey*, (1994) 14 *Juristat* pp. 1-22.

161. *Home Violence Underreported, Records Show*, A3, *San Francisco Chronicle*, August 25, 1997.

162. *A.B.A. Center on Children and the Law, The Impact of Domestic Violence on Children: A Report to the President of the American Bar Association* (1994).

163. *Straus, Children as Witness to Marital Violence: A Risk Factor For Life Long Problems Among a Nationally Representative Sample of American Men and Women* (Paper presented at the

husbands, children are present in approximately 25% of the cases.<sup>164/</sup>

**What is "domestic violence?"** It is recognized by state law to be "criminal conduct." (Pen. Code, § 13701.) It is defined in Penal Code § 243(e) (misdemeanor battery), Penal Code § 273.5 (spousal and cohabitant battery)<sup>165/</sup>, Penal Code § 12028.5 (confiscating firearms), Penal Code § 13700 (law enforcement response); and Family Code § 6211 (Domestic Violence Prevention Act.) While each statute contains a slightly different description of domestic violence, the following is a good working definition:

"Domestic violence means intentionally or recklessly causing or attempting to cause bodily injury to a family or household member or date or placing a family or household member or date in reasonable apprehension of imminent serious bodily injury to himself or herself or another."

**Each of the above-referenced statutes requires that a special relationship exist between the victim and the defendant.** All include current spouses and cohabitants of the opposite sex. They differ in their inclusion of former cohabitants, cohabitants of the same sex, dating or engagement relationships, co-parents, parents, children and other relatives and household members.

**Domestic violence includes a husband or ex-husband who beats his wife** or ex-wife, a wife or ex-wife who beats her husband or ex-husband, an unmarried person who is beaten by the person with whom she/he lives or has lived, or has or had a child or dates or has dated, and a parent, guardian or other family member who sexually assaults or physically abuses a child in the family. (Also included are elderly parents or dependent adults who are beaten by their children or grandchildren or caretakers.)

## **SPOUSAL, DATE OR INTIMATE PARTNER ABUSE**

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September 1991 Ross Roundtable on Children and Violence in Washington, D.C.) (1991).

164. Crawford & Gartner, *Woman Killing, Intimate Femicide in Ontario (1974-1990)* (Toronto: The Women We Honor Action Committee.)

165. Penal Code section 273.5 covers cohabitants of the same sex, as well as of a different sex. A Court of Appeal recently ruled that the provision of this section penalizing the willful infliction of corporal injury causing a traumatic condition on a person who is the mother or father of his or her child does not cover a man who beats a woman pregnant with his child. (*People v. Ward* (1998) \_\_\_\_ Cal.App.4th \_\_\_\_, 1998 WL 110397.)

**Much of the information in this section applies to victims of spousal, date or intimate partner abuse, as well as child abuse.** However, because there are issues that separate the two, they are divided into separate sections.

**Also, this section focuses on women who are battered by men, because that is the norm.** However, it is not unheard of for women to abuse men or for one partner in a same-sex relationship to physically abuse the other. Much of the information in this section is relevant to any case of domestic abuse, including same-sex abuse.

## **What To Do If Your Spouse, Date or Intimate Partner Beats You (Or Your Children)**

- ! **Call the police immediately.** The police are obligated to protect you and arrest your attacker. If a police officer does not arrive within a few minutes, call again.
- ! **When the police arrive,** insist on filing a police report, whether or not you intend to press charges.
- ! **Write down the officer's name** and badge number.
- ! **If the police arrest the batterer,** he may be released in a short period of time. Take immediate steps to protect yourself and your children from future abuse, such as obtaining a protective or restraining order from the court.
- ! **Save all the evidence of what happened to you.** Save the clothing you were wearing when you were attacked. Take color pictures of your injuries. If you required medical attention, get a copy of the medical record. Ask for a copy of the police report.
- ! **Make sure you are safe from another beating.** Call friends, relatives, neighbors or a battered women's shelter to help you. (See Chapter Nine, Directory of Services, at the end of this book for how to contact a shelter near you.) Tell the counselor at the shelter exactly what has happened to you. Most emergency shelters for battered women keep the shelter address a secret so that an attacker cannot find a woman who goes to the shelter. A person from the shelter may be able to arrange to meet you and your children at a neutral place to take you to the shelter. You will be asked to keep the address of the shelter confidential. The shelter may be able to assist you with finding a temporary shelter for any pets you may have. If the shelter is full, however, you will need to consider other resources, such as friends or family.

## **Your Rights If You Have Been Attacked**

## **Battered Women's Syndrome**

**You have a right to defend yourself.** However, the force you use must be only enough to stop the attacker. (Pen. Code, § 692 et seq.) If you use greater force than the law feels is necessary, you may be accused of attacking the man. It is important that you know that some women who have killed their abusive partners, reportedly in response to domestic violence, have been convicted of murder and sent to prison. (*People v. Macioce* (1987) 197 Cal.App.3d 262.)

**However, evidence of "battered women's syndrome"** is admissible to allow the jury to determine whether a woman believed that she had to kill her attacker to protect herself, and whether that belief was reasonable. (See discussion of case and statutory law, *infra*, and see Walker, *The Battered Woman*, New York, Harper Row (1979).) The syndrome is a term for the wide variety of controlling mechanisms that a man (although it can be a woman) uses on a woman (although it can be a man) and for the effect that these control mechanisms have. It has been defined as a "pattern of responses and perceptions presumed to be characteristic of women who have been subjected to continuous physical abuse by their mate[s]." (*People v. Romero* (1994) 8 Cal.4th 728, 735, n.1.)

**Battered women often employ strategies to stop being beaten**, including hiding, running away, counterviolence, seeking the help of friends and family, going to a shelter, and contacting police. Nevertheless, many battered women remain in the relationship because of lack of money, social isolation, lack of self-confidence, inadequate police response, and a fear (often justified) of reprisals by the batterer. The battering man may make the battered woman depend on him and generally succeeds, at least for a time. A battered woman often feels responsible for the abusive relationship and she can't figure out a way to make him stop beating her. In sum, it is the physical control of the woman through economics and through relative social isolation, combined with the psychological techniques employed by the man, that make her so dependent.

**Many battered women go from one abusive relationship to another** and seek a new controlling partner to protect them from the previous abuser. With each successful victimization, the person becomes less able to avoid the next one. The violence can gradually escalate, as the batterer keeps control, using ever more severe actions, including rape, torture, violence against the woman's loved ones or pets, and death threats. Battered women sense this escalation. In the case of battered women who kill their abusers in self-defense, it is usually related to their perceived change of what is going on in a relationship. They become very sensitive to what sets off batterers. They watch very carefully. Anybody who is abused over a period of time becomes sensitive to the abuser's behavior and when she sees a change begin in that behavior, it tells her that something is going to happen.

**The traditional cycle of violence** includes phases of tension-building, violence, and then forgiveness-seeking, in which the man promises not to batter the woman any more and she believes him. During this period, there are occasional good times. That is one of the things that leads a victim not to change her circumstances. Intermittent reinforcement is the key. But after a while, the violence begins again. A woman is often afraid to flee because she feels he will find her, as he has in the past. He reinforces her belief that she can never escape him. Unless her injuries are so severe that something absolutely has to be treated, she will not seek medical treatment. That is the pattern of her life. (See expert testimony recounted in *People v. Humphrey* (1996) 13 Cal.4th 1073.)

**Evidence Code section 1107 provides that, in a criminal action,** expert testimony may be presented by the prosecution and/or the defense regarding battered women's syndrome, including the physical, emotional, or mental effects upon the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse that form the basis of the criminal charge. The California Supreme Court recently decided, in the case of *People v. Humphrey, supra*, 13 Cal.4th 1073, that evidence of the syndrome may be introduced so that the jury can understand the circumstances in which the defendant found herself at the time she killed her husband, and judge the reasonableness and the existence of her belief that the killing was necessary.

**In a recent opinion, a Court of Appeal ruled that expert testimony concerning a battered woman's mental state** on the night she murdered her batterer was properly excluded from the trial. The court reasoned that Penal Code section 29 prohibits the use of expert testimony to prove whether a criminal defendant has the requisite fear for her life at the time of the crime, and Evidence Code section 1107(a) was intended only to codify existing rules concerning how battered women's syndrome affects the perception of its sufferers, not to create an exception to Penal Code section 29. (*People v. Erickson* (1997) 57 Cal.App.4th 1391.)

## **Protective Orders That Can Be Obtained**

**There are several different types of orders** that can be obtained to protect you and your family members in domestic violence situations. If necessary, through the police, you can get an emergency protective order (EPO) by telephone when courts are not in session, such as on nights and weekends, to protect you from abuse by a family member until the close of judicial business on the fifth court day following the day of its issuance or the seventh day following the day of its issuance, whichever is earlier. (Fam. Code, § 6250-6257.)

**Before a court will issue an EPO**, there must be reasonable grounds to believe that an adult is in immediate and present danger of domestic violence or that a child is in immediate and present danger of abuse by a family or household member. The judicial officer must also be satisfied that an EPO is necessary to prevent the occurrence or recurrence of domestic violence or child abuse. This order must be served on the restrained person, if that person can reasonably be located. A copy must be given to the protected person, and a copy must be filed with the court as soon as practically possible. (Fam. Code, §§ 6240-6273.) Law enforcement may make a warrantless arrest for violation of an EPO. (Pen. Code, § 836(c)(1).) The law enforcement officer who requested the protective order shall use every reasonable means to enforce it (Fam. Code, § 6272) and shall carry copies of the order while on duty. (Fam. Code, § 6273.)

**Such orders are now registered with the Department of Justice**, pursuant to Family Code section 6380, et seq.<sup>166/</sup> A willful and knowing violation of a protective order is a crime punishable by a fine of not more than \$1,000 or by imprisonment in a county jail for not more than a year, or by both a fine and imprisonment. (Fam. Code, § 6388; Pen. Code, § 273.6.) Law enforcement personnel can arrest a defendant for violation of a Domestic Violence Protective Order (DVPO) without a warrant. (Pen. Code, § 836(c)(1).) Law enforcement must maintain data bases available to any officer responding to a scene of domestic violence. (Fam. Code, § 6383.) The district attorney has the primary responsibility to enforce these orders. (See discussion in Domestic Relations section of the Handbook, *supra*.) A court is now required to consider the issuance of a stay-away order in all domestic violence cases.<sup>167/</sup> (Pen. Code, § 136.2(g).)<sup>168/</sup>

**You can get an ex parte DVPO if you fear an attack** against you or your children, or you fear a person has the intent to abduct your child and flee the court's jurisdiction. (These are temporary restraining orders, or TROs, given without notice to the person being restrained.) A showing by the applicant of a reasonable proof of past acts of abuse is sufficient to get this type of DVPO. You can get such an order by filling out forms available at the county court. If you have an attorney, he/she can help you get such an order, or call a battered women's shelter for help. (See

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166. So are Temporary Restraining Orders (TROs), injunctions, criminal court domestic violence orders, domestic violence orders issued by other states if registered with the court clerk, orders regarding custody and visitation terms and conditions, and juvenile court protective orders. (Fam. Code, §§ 6380 and 6385.)

167. Pursuant to new amendments to Penal Code sections 136.2, effective January 1, 1998, the court is required to provide copies of various restraining orders to all interested parties.

168. However, have a contingency plan in place in the event the person violates the EPO (i.e., friends whose home you can go to or the address of a shelter to go to.)

**The court can issue a DVPO** to your husband, or the man you are living with or dating, ordering him not to molest, attack, strike, stalk, threaten, sexually assault, batter, harass, telephone, destroy personal property, contact (either directly or indirectly, by mail or otherwise), come within a specified distance of or disturb you peace, and on good cause shown, other named family or household members. (See Fam. Code, §§ 240-246, 2045, 4620, and 6300-6327.) You can also ask for an order excluding a party from the family dwelling, your dwelling, the common dwelling of both parties, or the dwelling of the person who has care, custody, and control of a child to be protected from domestic violence for the period of time and on the conditions the court determines, regardless of which party holds equitable or legal title or is the lessee of the dwelling. (Fam. Code, §§ 6321 and 6340.) Finally, you can get an order enjoining other behaviors necessary to carry out any of the previously-mentioned orders. (Fam. Code, § 6322.) (See also Welf. & Inst. Code, § 213.5, that provides for an order enjoining a parent, guardian, or former household member from molesting, attacking, striking, sexually assaulting or battering a child, or excluding them from the dwelling, or prohibiting them from engaging in other behavior likely to disturb the child.)

**The court may restrain any person from transferring, encumbering,** concealing, or in any way disposing of any property, except in the usual course of business, or for the necessities of life. When any of these ex parte orders are issued, the matter is returned to court within 20-25 days with an order to show cause why a permanent order should not be granted.

**Orders that can be issued ex parte can also be issued after notice and hearing,** pursuant to Family Code sections 6340-6345.<sup>169/</sup> An order issued after a hearing can last for three years, and can be renewed without a showing of any further abuse since its issuance. (Fam. Code, § 6345.) Other relief available after a noticed hearing includes restitution to a victim of domestic violence, an order that either or both parties participate in counseling (Fam. Code, § 6343; each party shall bear the cost of his/her own counseling separately, unless good cause appears for a different apportionment) or a batterer's treatment program, and attorneys' fees in domestic violence cases. When protective orders are issued in domestic violence cases, the respondent is prohibited from purchasing or receiving a firearm. (Fam. Code, §§ 6218 and 6389.) The court must advise the person so restrained of this when he

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169. Law enforcement personnel may serve the DVPO, TRO or EPO upon request. (Fam. Code, § 6383.) A defendant is considered to be served with an order if he is in court when the judge issues the order. (Fam. Code, § 6384.)

appears at a hearing. (Fam. Code, § 6304.)<sup>170/</sup> A violation of this order is punished pursuant to Penal Code section 12021(g). An acquisition or attempt to acquire such a firearm within ten years of certain misdemeanor convictions (such as for spousal battery) is punishable by a one-year jail or prison sentence or a \$1,000 fine, or both. (Pen. Code, § 12021(c).)

**A judge can also issue an order against interfering with a witness**, including a victim witness, who is testifying in a domestic violence case. (Pen. Code, § 136.2(g) and (h)). A violation of this order is a misdemeanor, and is charged pursuant to Penal Code section 136.1. Recently enacted Penal Code section 14020 et seq. sets forth the Hertzberg-Leslie Witness Protection Act, a program intended to provide relocation and other protective services to witnesses in criminal proceedings who are in danger of retaliatory violence because of their testimony.

**You are entitled to have a support person accompany you to any proceeding** to obtain a protective order to enjoin specific acts of abuse, such as stalking, harassing, and destroying property, to exclude a person from a dwelling, and to enjoin other specified behavior. (See Code Civ. Proc., § 527.6(f) and Fam. Code, § 6303.)

**The court also may determine who will have temporary possession of property** that you own together, and who will have temporary custody of and visitation rights with your children. (Fam. Code, §§ 6323-6325.) The fact that a husband has beaten his wife may be relied upon by a court to deny him custody of his children, lest they develop a pattern of learned helplessness that could make them susceptible to abusive relationships later in life. (*In re Heather A.* (1996) 52 Cal.App.4th 183.)

**Whenever custody or visitation is ordered in cases involving domestic violence**, the order should specify the manner of transferring the child between parents in order to limit the child's exposure to potential domestic conflict or violence. The court should consider whether visitation or custody should be limited to third-party arrangements, or whether it should be suspended or denied. A minor may be removed from his home, or the court may order that the offending parent or guardian be removed from the home, or the court can consider allowing the nonoffending parent or guardian to retain custody, as long as she can demonstrate to the court that she can protect the child from future harm. (Welf. & Inst. Code, § 361.) If one party is in a shelter or other confidential location, the court's order for time, day, place and manner of transferring the child should not disclose that location. (Fam. Code, §§ 3031, 3100 and 6323.) A party is entitled to have a support

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170. Family Code section 6389 allows the court, following a hearing, to mandate that the respondent surrender his weapons for storage, usually for the life of the order. Possession of firearms following such an order constitutes a misdemeanor.



person attend any mediation session concerning child custody held pursuant to Family Code section 3021, if a protective order has been issued. (Fam. Code, § 6303.)

**Whenever a summons is issued in a dissolution action, the summons contains another order available** under the Family Code, the automatic temporary restraining order (ATRO) (See Fam. Code, §§ 231-235; see discussion in Domestic Relations section of this handbook.)

**Finally, you can also obtain civil anti-harassment orders**, even if you do not have a domestic relationship, pursuant to Code of Civil Procedure sections 527 and 527.6.<sup>171/</sup> These orders are enforceable under Penal Code sections 166 or 273.6. On the request of the petitioner, these orders are to be served on respondent by any law enforcement officer on the scene. The officer is required to verify the existence of the order if the protected person cannot produce a copy of it, notify the respondent of its terms and enforce it. The violation of all protective orders can be prosecuted under Penal Code section 166 or Code of Civil Procedure section 1209.

## Pressing Charges

### Call The Police

**When the police arrive, insist on filing a police report, even if you do not want to press charges**<sup>172/</sup>. The police report is **crucial** for your future protection. It will support you if you are attacked again and want to press charges, seek to gain custody of your children, or wish to obtain an EPO or a TRO against your attacker.

### You Can Have Your Attacker Arrested

**There are two ways for you to have your attacker arrested: police arrest and citizen's arrest.** Also, the police may issue a misdemeanor citation against your attacker in less serious situations, unless the arresting officer determines that there

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171. Your employer can obtain a TRO on your behalf pursuant to Code of Civil Procedure section 527.8.

172. The district attorney may wish to prosecute your husband based on the police report, even if you do not cooperate as a witness.

is a reasonable likelihood that the offense will continue or that the safety of persons or property would be endangered, in which case the person will be arrested and taken before a magistrate. (Pen. Code, § 853.6 et seq.; see discussion, *infra*.)

## **Police Arrest**

**When the police answer your call, you should tell them if you want your attacker arrested.** The police can usually only arrest the attacker if they have an arrest warrant, or if they have no warrant, if he commits a crime in their presence; he committed a felony, though not in their presence; or if they have reasonable cause to believe that a serious attack (felony) has been committed. (Pen. Code, § 836 (a).) Felonies are more serious attacks and threats, while misdemeanors are less serious.

**However, if a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order** issued under the Family Code, section 527.6 of the Code of Civil Procedure, section 213.5 of the Welfare and Institutions Code, or section 136.2 of the Penal Code, or of a similar order issued by the court of another state, tribe, or territory, and the peace officer has reasonable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer may arrest the person, whether or not the violation occurred in the presence of the arresting officer. The officer should, as soon as possible, check that a true copy of the protective order has been registered with the Domestic Violence Protection Order Registry, unless the victim provides the officer with a copy of the order. (Pen. Code, § 836(c).)

**In situations where mutual protective orders have been issued** under section 6200 of the Family Code, the peace officer should attempt to arrest the primary aggressor, or the person determined to be the most significant, rather than the first aggressor. (Pen. Code, § 836(c)(3).)

**If a person commits an assault or battery upon his/her spouse**, upon a person with whom he/she is cohabiting, or upon the parent of his/her child, the peace officer may arrest the person without a warrant where he has reasonable cause to believe that the person to be arrested has committed the assault or battery, and where he makes the arrest as soon as reasonable cause arises to believe that the commission of the assault or battery has occurred. (Pen. Code, § 836(d).)

**To help the police decide** whether to arrest the attacker, you should:

- Describe the attack to them, telling them the amount of force used.

- Describe your injuries.
- Tell the police if a weapon was used **or** threatened to be used against you. (Pen. Code, § 12028.5 allows certain law enforcement personnel at the scene of an incident of domestic violence involving a threat to human life or physical assault to take custody for no less than 48 hours of any firearm or deadly weapon in plain sight or discovered pursuant to a consensual search, as necessary for the protection of the peace officer or other persons present.)

**Penal Code section 12028.5 sets forth a procedure** whereby, if a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency can advise the owner of the firearm within ten days of the seizure, and file a petition in superior court to determine if the firearm or other deadly weapon should be returned.

**A police officer has a duty to listen to your statement** and to make a police report. You may take the name and badge number of the officer for your own record.

## **Citizen's Arrest**

**If the police do not arrest your attacker, you may make a citizen's arrest.** Every citizen can arrest another person who has committed a crime or attempted to commit a crime in his/her presence, who has committed a felony, even if not in his/her presence, or when a felony has been committed, and she reasonably believes the person to have committed it. (Pen. Code, § 837.) A law enforcement officer has a duty to inform you of your right to make a citizen's arrest and how to do so safely when he/she responds to a domestic violence call. (Pen. Code, § 836(b).) Any time you are hit, beaten or assaulted, the attacker is committing a crime in your presence. You should tell the police if you want to make a citizen's arrest and have your attacker taken away. You have a legal right to make a citizen's arrest and once the arrest is made, the police have a duty to take your attacker into custody.

**If the officer refuses to take him into custody, call a battered women's shelter** for advice. (Pen. Code, §142 provides that any peace officer who has the authority to receive or arrest a person charged with a criminal offense who willfully refuses to do so, is subject to a fine of \$10,000 or by imprisonment in the state prison, or by a one-year sentence in the county jail, or by both the fine and the imprisonment.)

## **You Can Press Charges, Even If No Arrest Was Made or Citation Issued**

**If your attacker was not arrested or cited, and you have decided to press charges,** you must file a police report. The police will then go to the district attorney's office with a copy of this report. (In some locations, misdemeanors are prosecuted by the city attorney instead of the district attorney.) To proceed, the district attorney must be convinced that a crime probably was committed and that the person accused probably committed it. If you have any evidence of the crime, you should give it to the police and request that they take it to the district attorney's office. It is helpful to get color photographs of your injuries for use at the trial. To encourage prosecution, you may have to convince the district attorney that you are willing to file the complaint and that you will not later refuse to testify.<sup>173/</sup> You should telephone the district attorney's office and make an appointment to talk with a deputy district attorney. Some district attorney's offices have special programs to assist victims of domestic violence. If the district attorney decides to prosecute your attacker for a crime or crimes, the case will go to preliminary hearing (if a felony) and a trial. (Pen. Code, § 859 et seq.)

## **After An Arrest**

**Even if your attacker is arrested and taken to the police station, he may be free to return home in a short period of time after his arrest.** The police may issue a misdemeanor citation (similar to a traffic ticket) and let him go, unless he demands to be taken before a magistrate, or unless the arresting officer determines that there is a reasonable likelihood that the offense will continue, or that the safety of persons or property would be endangered, in which case he will be taken before a magistrate. (Pen. Code, § 853.6 et seq.) At most, a few hours after he is taken before the magistrate, his bail will be set and, if he has money, he can post bail and be released, although bail may be denied in certain circumstances such as where the defendant used a firearm, violated a restraining order,<sup>174/</sup> poses a danger to the

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173. However, many jurisdictions are following a "no drop" policy, whereby they will refuse to drop charges against a man who has committed an act of domestic violence, even if the woman no longer wishes to pursue the case. The district attorney's office may actually compel your appearance at the trial by serving you with a subpoena; you can be held in contempt if you disobey the subpoena. For the first contempt, you can be ordered to attend a domestic violence program for victims for up to 72 hours or perform up to 72 hours of appropriate community service. For subsequent contempt, you can be imprisoned until you comply with the court's order to testify. (Code Civ. Proc., § 1219.) If further incarceration becomes penal, its duration is limited to five days. (Code Civ. Proc., § 1218.) The district attorney's office may also request that you enter into a written undertaking to appear, or forfeit a set amount of money. (Pen. Code, § 1332.)

174. Assembly Bill 45 requires, as of January 1, 1998, that a magistrate or commissioner set bail in an amount that he or she deems sufficient to assure the protection of a victim, or family member of a victim, of domestic violence, for a person who has been arrested for the misdemeanor offense

public, used alcohol or a controlled substance, has a previous criminal record, has a mental condition, or has a record of failure to appear. (Pen. Code, § 1275.)

**Penal Code section 1270.1 provides that a hearing is required** before a person charged with a felony domestic violence is released on bail which differs from the bail set in the uniform county-wide bail schedule, or is released on his/her own recognizance (his promise to return for a formal hearing, to obey all reasonable conditions imposed by the court or magistrate, to promise not to leave the state without leave of the court, to agree to waive extradition if he fails to appear as required and is apprehended outside California, and to acknowledge that he has been informed of the consequences and penalties applicable to a violation of the conditions of his release) and the hearing should address the issue of any threats made against victims or witnesses.

**If your husband has no money but has friends or relatives** who will vouch for him, he may be released on his own recognizance. (Pen. Code, § 1318.)

**You must be prepared for the fact that your attacker may return soon after he has been arrested.** He may return home in an angry, violent mood. On the other hand, the arrest may make him realize how serious his actions were.

**If you believe your attacker will return home to beat you in revenge,** arrange to stay with friends or relatives, or call a women's shelter immediately to arrange a safe place for you and your children to stay until you make new plans, or seek a protective order from the court. The district attorney's office can request a stay away order that prohibits your husband from contacting you with the intent to annoy, harass, threaten or commit acts of violence, or the court can issue the order on its own. (Pen. Code, § 136.2(g) and (h).)

## **Criminal Prosecution**

### **After an Arrest**

**After your attacker is arrested, the police report is sent to the district attorney to draw up a complaint for prosecution.**<sup>175/</sup> The district attorney may ask you to come

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of violating a domestic violence restraining order. (Pen. Code, § 1269c.) Penal Code section 1270 requires that a defendant is entitled to a bail-reduction hearing within 48 hours of his/ her arrest. (*Dant v. Superior Court*) (1998) \_\_\_\_ Cal.App.4th \_\_\_\_, 71 Cal.Rptr.2d 546.)

175. The Legislature endorsed the concept of vertical prosecution of spousal abuse cases (the same prosecution unit is involved from the filing of the complaint until completion of the case.)

to the district attorney's office for an interview. If the crime is a felony, the district attorney will sign the complaint. If the crime is a misdemeanor, and if there was no police officer at the scene of the beating who saw the crime and can testify as a witness at trial, the district attorney may ask you to sign the misdemeanor complaint, although many district attorney's offices have a policy of never asking victims to sign complaints. (Pen. Code, § 740 et seq.) The district attorney often will refer you to a family violence victim advocate to assist you through the prosecution process.

**If a citizen's arrest was made after the beating, you will have to go the district attorney's office the next day to make a formal citizen's complaint.** Some district attorneys may be reluctant to prosecute the batterer if it appears that you are not firm in your decision to press charges and if you appear unwilling to testify against him. However, newly-enacted Evidence Code section 1109 allows prosecutors to introduce past evidence of domestic abuse (if it was not more than 10 years before the offense) to prove that a defendant was guilty of domestic abuse again, so they may decide to proceed against the person even without your cooperation. Prosecutors may also make use of spontaneous statements made by the victim to the police shortly after the domestic violence occurred, even if the victim does not testify. (Evid. Code, § 1240; *People v. Hughey* (1987) 194 Cal.App.3d 1383.)

**Once the district attorney has filed a formal criminal complaint on behalf of the state, only the district attorney can withdraw it.**

**You will be served with a subpoena to testify as a witness in court.** (Pen. Code, § 1326.)<sup>176/</sup> Statistics show that a large number of domestic violence victims refuse to testify. Prosecuting a criminal case is time-consuming and costly to the state. Therefore, district attorneys may be reluctant to file complaints if they believe that you will not testify voluntarily. If you are serious about pressing charges and testifying, you should emphasize these intentions to the district attorney to encourage prosecution. Your medical records may also be subpoenaed or obtained through a search warrant. (Pen. Code, §§ 1524 and 1543.)

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(Pen. Code, §§ 273.8-273.87.)

176. Penal Code section 1054.2 prohibits a defense attorney from informing the defendant of the address or telephone number of a victim or witness without a court hearing and a showing of good cause.

**An arraignment will usually be held a few days after the arrest.** The arraignment is a hearing before a judge where the defendant is told of the criminal charges against him. (Pen. Code, § 976 et seq.) Bail will be set at this hearing. (Pen. Code, § 1273 et seq.)

**You may ask the judge, as a condition of bail, to order your husband to stay away from you.** (Pen. Code, § 136 et seq.) If such an order is issued as a condition of bail, and a party breaks the order by going to see you, his bail may be revoked and he could be jailed.

## **The Trial**

**First, there may be a preliminary hearing.** If the attack was serious enough to be deemed a felony, you may be required to testify at a preliminary hearing (although see discussion in the Violence Against Women section of the handbook, *supra*, on use of police hearsay testimony at this hearing instead.) At the preliminary hearing, the district attorney must present enough proof to show that you have been attacked by the suspect. If called to testify, you will have to answer questions from your attacker's attorney. If you are unwilling to testify, the charges may be dropped and the prosecution may end. (Pen. Code, § 871 et seq.)

**Whether the case involves a felony or a misdemeanor,** you will probably be required to testify against your attacker at trial.<sup>177/</sup> At the trial, the district attorney will ask you about your relationship with the attacker, the attacker's personality and treatment of you,<sup>178/</sup> the argument or events that preceded the attack, the time and place of the attack, the pain and injuries you suffered, and the steps you have taken to protect yourself.<sup>179/</sup>

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177. The privilege not to testify against your spouse does not apply in domestic violence cases. (Evid. Code, §§ 970-972.) An interpreter may be available, pursuant to Evidence Code section 755, for the trial, as well as for obtaining a protective order.

178. Newly enacted Evidence Code section 1109, effective January 1, 1997, allows prior acts of domestic violence (introduced either through witness testimony or through 911 tapes of phone calls) to be considered as evidence by the court to prove the defendant's propensity to commit such acts, if the value of the evidence outweighs the prejudicial effect on the defendant. Evidence Code section 1103 provides that evidence of the character or trait of character (in the form of an opinion, evidence of reputation or evidence of specific instances of conduct) of the victim or of the defendant may be introduced under certain circumstances.

179. If the domestic violence engaged in results in the woman being killed, a recently enacted law allows the introduction of hearsay testimony (such as from a woman's diary) from a person who is unavailable as a trial witness if it describes the infliction or threat of physical violence and is deemed trustworthy. (Evid. Code, § 1370.)

**You will be cross-examined by the defense attorney.** The defense attorney may challenge the truth of your statements, and may accuse you, rather than the defendant, of being at fault. You may bring up to two persons to court with you who can give you moral support and encouragement, one of whom can be a witness. You may also bring staff from a women's shelter with you. Only one of the support persons may accompany the you to the witness stand, although the other may remain in the courtroom during your testimony. Support persons may be excluded under certain circumstances. (Pen. Code, §§ 868 and 868.5.)

**When you finish testifying and are dismissed from the witness stand,** you are free to leave the courthouse. You may wish to do so immediately, to avoid seeing the defendant and to prevent him from following you to your home or shelter when the trial is adjourned for the day. If you fear your attacker will be released and then follow you and beat you to get even with you for pressing charges, ask the police to escort you safely home, or seek a protective or restraining order from the court.

**Evidence Code sections 1037-1037.7 provide a privilege** that protects confidential communications between the victim and a domestic violence counselor. There are two exceptions, death of the victim and the waiver of the privilege by the victim. A court is permitted to compel disclosure of the privileged information under certain circumstances.

**It is possible that your children may be called as witnesses.** The district attorney can make a motion that the court appoint a representative for a child witness in a domestic violence case pursuant to Code of Civil Procedure section 187. A child may also be entitled to have a support person who is not a witness present. (Pen. Code, § 868.5.) The court can also issue orders to protect the child from the defendant. (Pen. Code, § 136.2(g) and (h) and Code Civ. Proc., § 128(a)(5).)

**To find your attacker guilty,** the district attorney must convince the judge or the jury that the defendant is guilty beyond a reasonable doubt. If the defendant is found not guilty, he will be released immediately.

## **Sentencing**

**Penal Code section 273.5** specifies that any person who willfully inflicts bodily injury resulting in a traumatic condition (a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force) upon his/her spouse, a person with whom he or she is living, or a person who is the mother or father of his/her child, is guilty of a felony and can be sentenced to state prison for up to four years, to county jail for not more than a year or by a fine of \$6,000, or both. If probation is granted, the court shall require participation in a batterer's treatment



program as a condition of probation, pursuant to Penal Code section 1203.097. The conditions of probation may also include, in lieu of a fine, one or both of the following requirements: 1) a payment to a battered women's shelter up to a maximum of \$5,000 or 2) that the batterer reimburse the victim for the reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the batterer's offense. The defendant will not be ordered to make payments to a shelter if this would impair his ability to pay restitution or court-ordered child support. All separate property of the offending spouse must be exhausted before community property can be used to pay restitution.

**If probation is granted**, or the execution or imposition of a sentence is suspended for any person who previously has been convicted of spousal, cohabitant or parental battering for an offense that occurred within seven years of the offense of the second conviction, it shall be a condition thereof that he be imprisoned in a county jail for not less than 96 hours, except for good cause shown, and that he participate in, for no less than one year, and successfully complete, a batterer's treatment program.

**If probation is granted**, or the execution or imposition of a sentence is suspended, for any person convicted of spousal, cohabitant or parental battering who previously has been convicted of two or more violations for offenses that occurred within seven years of the most recent conviction, it shall be a condition thereof that he be imprisoned in a county jail for not less than 30 days, except for good cause shown, and that he participate for no less than one year, and successfully complete, a batterer's treatment program.

**Penal Code section 1203.097** provides that if a person is granted probation for a crime of domestic violence, the terms of probation shall include all of the following: 1) a minimum period of probation for 36 months; 2) a criminal court protective order; 3) notice to the victim of the disposition of the case; 4) booking the defendant within one week of sentencing, if not already booked; 5) payment of a minimum of \$200; 6) successful completion of a batterer's program or other appropriate counseling program for a period of not less than a year; 7) performance of a specified amount of appropriate community service; and 8) enrollment in a chemical dependency program, where appropriate.

**Any person who personally inflicts great bodily injury** under circumstances involving domestic violence in the commission or attempted commission of a felony shall have the punishment enhanced by an additional term of three to five years. (Pen. Code, § 12022.7.)

**Assembly Bill 102 added section 1170.6 to the Penal Code, effective January 1, 1998.** This section will require that, in specified cases of domestic violence, where

the defendant is or has been a member of the household of a victim or of a minor, or has some other specified relationship to the victim or to the minor, and the offense occurred in the presence of or was witnessed by the minor, the court shall consider this fact as a circumstance in aggravation of the crime.

**Penal Code section 243(e)** provides that the penalty for misdemeanor battery is higher if the victim has a certain relationship to the defendant. The victim must be the defendant's noncohabiting former spouse, fiancé, or a person with whom the defendant has, or previously had a dating relationship. In such cases, the penalty is \$2,000 or up to one year in jail, or both. Upon a second conviction, the person shall be imprisoned for not less than 48 hours, unless the court, upon a showing of good cause, elects not to impose the mandatory minimum imprisonment. The subsection also mandates batterer's counseling for one year if probation is granted, or the execution or imposition of the sentence is suspended.

**In lieu of a fine, the court may order the defendant to make a payment** to a battered women's shelter, up to a maximum of \$5,000, and/or order the defendant to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

**Other statutes providing penalties relevant to domestic violence cases** include Penal Code section 653m (harassing phone calls), Penal Code section 601, which defines trespass, and Penal Code sections 136 and 422 (intimidating a victim or a witness). A person may be guilty of vandalism of community property (*People v. Kahanic* (1987) 196 Cal.App.3d 461) and burglary of a spouse's residence (*People v. Davenport* (1990) 219 Cal.App.3d 885).

**Penal Code section 273.55 increases punishment in situations where there is a prior conviction** history. A felony conviction for Penal Code section 273.5 that occurs within seven years of a previous conviction for specified assaults is punishable by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison for two to five years and a fine of up to \$10,000.

**Pursuant to Penal Code section 273.56, if the defendant is convicted under section 273.5** and sentenced under 273.55, it shall usually be a condition of probation that the defendant be imprisoned in a county jail for not less than fifteen days. Further, as a condition of probation, the defendant must participate in for no less than one year and successfully complete a batterer's treatment program. The court may delete the mandatory imprisonment and/or batterer's treatment program upon a showing of good cause. If probation is granted or the execution or imposition of a sentence is suspended for any person sentenced under 273.55 because the person was convicted previously for two or more offenses that occurred within seven years of an offense designated in section 273.55(a), the person shall be imprisoned in a

county jail for not less than 60 days and shall participate in for no less than one year and successfully complete a batterer's treatment program, except for good cause shown. Conditions of probation can also include a payment of up to \$5000 to a battered women's shelter and reimbursement to the victim for counseling and other costs.

**A conviction under Penal Code section 273.6**, violating a domestic violence restraining order or other order issued by the court to prohibit further contact, is a misdemeanor. If the violation results in a physical injury, the offender shall be imprisoned in the county jail for not less than 30 days nor more than one year. (The court can reduce or eliminate the mandatory incarceration time if the defendant has spent at least 48 hours in jail.) A subsequent conviction within seven years of a prior conviction for a violation of a similar order and involving an act of violence or a credible threat of violence is punishable by imprisonment in a county jail not to exceed one year or in state prison. A subsequent conviction for an act in violation of an order, that occurs within one year of the prior conviction, and results in physical injury to the same victim is punishable by a fine of up to \$2000, imprisonment in a county jail for not less than six months nor more than one year, or by both fine and imprisonment, or by imprisonment in state prison. (The court can reduce or eliminate the mandatory incarceration time if the defendant has spent at least 30 days in jail.) The court can also order the person convicted to undergo counseling and, if appropriate, a batterer's treatment program.

**If probation is granted**, the terms of the probation are identical to those provided pursuant to Penal Code section 273.5.

**The victim of any crime, or the victim's parents or guardians** where the victim is a minor, or the next of kin of the victim if the victim has died, have the right to be notified of the final disposition and sentencing proceedings in a case. These persons should be notified of their right to appear at the sentencing proceeding and to reasonably express their views. Their statements are to be considered by the court, as set forth under Penal Code section 1191.1. The court is required to state on the record its conclusion concerning whether the person would pose a threat to public safety if granted probation. The victim or the next of kin of the victim, if the victim has died, also has the right, upon request, to be present at any parole eligibility hearing to express her views and to have her statement considered. (Pen. Code, § 679.02(a)(6).) When a defendant has been convicted of a violent offense, the victim or the next of kin, if the victim has died, has a right to request notice from the Board of Prison Terms and the Department of Corrections to be notified of the date of the defendant's release, escape or death, and under certain circumstances, the community to which he will be released. (Pen. Code, §§ 679.03, 646.92, and 3058.8.)

**Penal Code section 3053.2 was recently added to authorize the parole** authority to impose conditions on the parole of a person released from prison for a domestic violence offense, including participation in or successful completion of a batterer's program, and, upon request of the victim, the issuance of protective orders.

## **Trespass**

**Penal Code section 601 provides that any person is guilty of trespass** who makes a credible threat to cause serious bodily injury to another and within 14 days, unlawfully enters upon specified identified property with the intent to execute the threat against the individual. This crime is punishable as a felony or as a misdemeanor.

## **Spouse Convicted of Attempted Murder Loses Rights**

**When a spouse is convicted of attempting to murder the other spouse**, the injured spouse is entitled to an award of 100% of the community property interest in the other spouse's retirement and pension benefits, plus reasonable attorneys' fees and costs. No temporary or permanent award of spousal support or medical, life, or other insurance benefits or payments will be made from the injured spouse to the other spouse. (Fam. Code, §§ 274, 782.5 and 4324.)

## **Civil Action**

**A victim or her next of kin if she has died, may also bring a civil action for recovery of damages suffered as a result of domestic violence.** The time for commencement of this action is within three years of the date of the last act of domestic violence. (Code of Civ. Proc., § 340.15.)

## **Federal Firearm Offenses Relevant to Domestic Violence**

**It is a federal crime, under the Brady Bill, to ship or transport in interstate or foreign commerce** or possess a firearm or receive a firearm shipped or transported in interstate or foreign commerce while subject to a valid protection order restraining such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. The protection order must have been issued following an evidentiary hearing as to which the defendant had notice and an opportunity to be heard, and must state either that the defendant poses a credible threat to the physical safety of the victim, or that the defendant is not allowed to use any force that would reasonably cause injury to the victim. (Law enforcement

officers are not subject to this law.) (18 U.S.C. § 922(g)(8).)<sup>180/</sup>

**It is a federal crime to possess a firearm after conviction of a state misdemeanor crime of domestic violence.** (18 U.S.C. § 922(g)(9).) The crime must have as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, and the defendant's conviction must have been obtained after he had the advice of counsel and notice of his right to a jury trial.<sup>181/</sup>

**The penalty for a violation of 18 U.S.C. §§ 922(b)(8), 922(g)(8), 922(d)(9) or 922(g)(9) is a ten-year term of imprisonment.**<sup>182/</sup> (See discussion, *supra*, on Violence Against Women Act as it pertains to domestic violence; see also 42 U.S.C. § 10401 et seq., which provides federal funding for family violence prevention and services.)

## **Written Policies By Law Enforcement Agencies Regarding Domestic Violence Calls**

**According to Penal Code section 13701**, every law enforcement agency should have developed, adopted and implemented written policies and standards for officers' responses to domestic violence calls by January 1, 1986. They shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred. These policies shall be in writing and available to the public upon request and shall include specific standards for the following:

- 1) Felony arrests;
- 2) Misdemeanor arrests;
- 3) Citizen arrests;
- 4) Verification and enforcement of TROs when the suspect is present and

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180. It is also a federal crime to knowingly transfer or sell a firearm to a person subject to a valid protection order. Law enforcement officers are exempt from the coverage of this section. (18 U.S.C. § 922(d)(8).)

181. It is also a federal crime to knowingly transfer or sell a firearm to a person convicted of a misdemeanor crime of domestic violence. The law enforcement exemption does not apply to this statute. (18 U.S.C. § 922(d)(9).) (A purchaser of a firearm is required to state that he has not been convicted of a misdemeanor crime of domestic violence. (18 U.S.C. § 922(s).)

182. The United States Supreme Court recently held that the Brady Act's interim provision commanding state chief law enforcement officers (CLEOs) to conduct background checks on firearm purchasers is unconstitutional. However, the court did not reach the issue of whether firearms dealers are obliged to forward to the CLEOs "Brady forms" and to wait five business days to consummate the sale of a firearm. (*Printz v. U.S.* (1997) \_\_U.S.\_\_, 117 S.Ct. 2365.)

- when the suspect has fled;
- 5) Verification and enforcement of stay away orders;
- 6) Cite and release policies;
- 7) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standby for removing personal property;
- 8) Assisting victims in pursuing criminal options;
- 9) Furnishing written notice to victims at the scene concerning the restrained person's possible release, the availability of shelters and other services, the option of filing a criminal complaint, the right to ask for various orders, the right to file a civil suit, where applicable, names and locations of rape victim counseling centers and 24 hour phone numbers, and proper procedures to follow after a sexual assault; and
- 10) Writing of reports.

**Penal Code section 13702** requires law enforcement agencies to adopt and implement written policies and standards for dispatchers' responses to domestic violence calls that rank calls reporting threatened, imminent or ongoing domestic violence and the violation of any protection or restraining order among the highest priority calls.

**Penal Code section 13730** requires each agency to have in place a system for recording domestic violence-related calls. These records should include whether weapons were used, whether the abuser was under the influence of alcohol or a controlled substance, and whether a previous call had been made involving domestic violence.

## **Alternatives to Criminal Prosecution**

**Recognizing the hardships on victims and families when criminal prosecution is involved, some district attorneys' offices set up alternatives to criminal prosecution.** Under these alternatives, the attacker does not go to trial and is not sent to jail. Instead, efforts are made to help the parties work out their differences through peaceful means to preserve the family.

## **Citation Hearing**

**One of the noncriminal procedures that is used to reconcile disputes instead of punishing the attacker is called a citation hearing.** A citation hearing provides a setting where both parties can present their feelings about the reasons for their dispute, rather than only presenting evidence about the attack, as they would at a

trial. The success of a citation hearing usually depends on the cooperation of the attacker, his recognition of the seriousness of his offense, and the desire of both parties to preserve their relationship. If you believe that the citation procedure is not useful, inform the district attorney of your conclusion and reasons, and emphasize your intention to stand by the prosecution and testify against your attacker.

**If the crime was a serious one, if a dangerous weapon was used and/or you were seriously injured**, the district attorney will be more willing to prosecute and less likely to suggest the citation procedure. Contact the district attorney's office for more information. (Pen. Code, § 853.6 requires that all domestic violence perpetrators subject to mandatory arrest be taken into custody, not merely cited and released, unless the arresting officer determines that the violator would not pose a danger to public safety and would not be a flight risk.)<sup>183/</sup>

## **Civil Compromise**

**Newly enacted Penal Code, § 1377 ends the option of civil compromise** for misdemeanor domestic violence cases (allowing the victim and the defendant to negotiate satisfaction of a claim for damages by the victim in exchange for dismissal of the criminal action). It requires prosecution of persons who strike or otherwise endanger their spouses, which can lead to penalties and jail time.

## **Alternative Resolution Hearings**

**Alternative resolution hearings may occur in lieu of filing formal charges** or as a way of settling charges already filed. They should be limited to cases involving a minor incident where there is an insignificant or non-existent history of abuse or violence, and where the suspect has not been involved in an alternative resolution or citation hearing within the previous 12 months. These hearings are held before a person who has received training in domestic violence and who will counsel the parties separately.

## **Pre-Trial Diversion Program**

**The domestic violence diversion program was repealed by the Legislature in 1995**, except as a condition of probation. (Pen. Code, § 1203.097.)

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183. Penal Code section 853.6 provides that each city, county or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate.

## **Questions Commonly Asked by Victims of Domestic Violence**

### **What if I decide to move out?**

If you feel that you will be in danger if you stay at home, take your children and move out immediately. If you have to leave your children with family or a neighbor, do not be afraid that you will later lose your right to either joint or sole custody of them. If you feel that they are in danger, call the county's Child Protective Services office to have them removed from danger.

You will not lose rights to your house, apartment or belongings if you move out. When you go, you can take with you anything that belongs to you alone and anything that belongs to you and your husband together. You may also withdraw all of the money you have with your husband in a joint bank account.

After you leave, stay with a woman friend, with family, or at a battered women's shelter. If you stay with a man who is not a relative, it may hurt your chances of getting spousal support (alimony) and, perhaps, child custody. California law recognizes a strong presumption that a woman who is living with a man has a decreased need to be supported by her former husband. This law also applies to men who are living with women and are asking for support from their former wives. (Fam. Code, § 4323.)

You may not have to divulge your new address when you go to court, if you fear that to do so would expose you to further violence.

### **How can I divorce my spouse?**

For details on how to obtain a dissolution of marriage, see Chapter Six on Domestic Relations. You will not be charged with desertion or lose any of your community property rights.

### **What if I am an undocumented alien and am afraid to report to the police that I have been beaten?**

Although victims of violent crimes should not be asked their citizenship or legal



status,<sup>184/</sup> you may wish to protect yourself from possible immigration problems before reporting the attack. Call a battered women's shelter and/or an attorney to help you decide what is best for you.

### **What if my attacker is on probation or parole?**

If your attacker is on probation, send a copy of your police reports and/or restraining orders to his probation officer. Call the county probation department where your attacker was sentenced to find out who his probation officer is.

If your attacker is on parole, call the California Department of Corrections and report the attack to his parole agent. Your attacker may have his parole revoked and be sent back to prison. (Pen. Code, §3060.)

If you are afraid of a man who is in state prison, you can find out when and where he will be released by contacting:

**Department of Corrections**  
Public Information  
515 S Street  
Sacramento, California 95814  
P.O. Box 942883  
Sacramento, California 94283-0001  
(916) 445-7682

## **Child Abuse**

### **What Is Child Abuse?**

**Child abuse is any act or lack of action that puts a child's physical or emotional health and development in danger.** Child abuse can take the form of physical abuse, sexual abuse, emotional abuse, emotional deprivation, physical neglect, or inadequate supervision. (Fam. Code, §§ 6203 and 6211.)

**Corporal punishment as a form of discipline (spanking) is legal, but may become child abuse,** depending on the manner and severity of the discipline. Corporal punishment can become abusive when a parent (or teacher, scoutmaster, adoptive parent, neighbor) uses extreme or inappropriate forms of corporal punishment.

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184. Under the Welfare Reform Act, the immigration status of a crime victim cannot be inquired into, although the immigration status of the perpetrator of the crime is relevant.

When corporal punishment is administered in an out-of-control way, out of anger and frustration, with a high degree of force, or when forms of corporal punishment are used that are not in relation to the child's developmental age, or with objects, such as belts, cords or brooms, it is child abuse.<sup>185/</sup>

## **Reporting Requirements**

**The Child Abuse and Reporting Act** requires specified individuals, such as child care custodians (including teachers, counselors and nannies), health practitioners, and clergy members, to report known or suspected instances of child abuse to child protective agencies. A violation of this reporting requirement is a misdemeanor. The Department of Justice maintains an index of child abuse reports. (Pen. Code, § 11160 et seq.)

**There is also federal law** requiring certain covered professionals (such as physicians, social workers, teachers, child care workers, law enforcement personnel, foster parents, and commercial film and photo processors), while engaged in a professional capacity or activity on federal land or in a federally-operated facility, to report suspected incidents of child abuse to a designated federal agency. (42 U.S.C. § 13031 et seq.) Failure to do so is punishable as a misdemeanor, pursuant to 18 U.S.C. § 2258.

## **The Penalty For Abusing Or Neglecting A Child**

**Child abuse is a crime.** A person convicted of child abuse can be jailed and fined. It does not matter whether the abusers are parents who are married or parents who are divorced or separated. Any parent is responsible for the physical and emotional health of his/her child. Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts unjustifiable physical pain or mental suffering on them, or willfully causes or permits their health to be injured, or willfully causes or permits them to be placed in a situation where their health is endangered may be punished by imprisonment in a county jail for not exceeding a year or in the state prison for two to six years. (Pen. Code, § 273a; see also Pen. Code, §§ 647.6 and 11165.6.)<sup>186/</sup>

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185. The Ninth Circuit recently ruled that a parent has no clear federal constitutional right under the Fourth or Fourteenth Amendments to strike her child with a belt without exposure to criminal prosecution. (*Sweeney v. Ada County* (9th Cir. 1997) 119 F.3d 1385.)

186. Effective January 1, 1998, civil compromise is no longer available to perpetrators of child abuse. (Pen. Code, § 1377.)

**If a person is convicted of violating Penal Code section 273a** and probation is granted, the court shall usually require the following minimum conditions of probation:

- 1) a mandatory minimum period of probation of 48 months;
- 2) a criminal court protective order and, if appropriate, residence exclusion or stay-away conditions;
- 3) successful completion of no less than one year of child abuser's treatment counseling program; and
- 4) if the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his/her probation officer.

**If the act constituting a felony violation of Penal Code section 273a** was female genital mutilation,<sup>187/</sup> the defendant shall be punished by an additional term of imprisonment in the state prison for one year. (Pen. Code, § 273.4; see also Health & Saf. Code, § 124170, which authorizes education, preventative and outreach activities focusing on new immigration populations that traditionally practice this and on the medical community that serves them.)

**Section 273ab of the Penal Code** provides that any person, who, having the care or custody of a child who is under eight years of age, assaults the child by means of force that to a reasonable person would be likely to produce great bodily injury, resulting in the child's death, shall be punished by imprisonment in the state prison for 25 years to life.

**Penal Code section 273d provides that any person who willfully inflicts** upon a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment in state prison for two to six years, or in a county jail for not more than one year, or by a fine of up to \$6,000, or by both the imprisonment and the fine. Any person found guilty of violating the above section can receive a four-year enhancement for a prior conviction of that offense. Probation can be granted upon the same conditions as for Penal Code section 273a.

**The Evidence Code has been amended to allow hearsay** to be used in a child abuse cases (i.e., child's statement made to police officer in police report) if the victim

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187. Female genital mutilation (also known as female circumcision) is defined as excision or infibulation of the labia majora, labia minora, clitoris or vulva, performed for nonmedical purposes. It is illegal, regardless of how it is done, or of the cultural reasons for doing it.

declarant is under the age of twelve and there is corroborating evidence of the abuse or neglect. (Evid. Code, § 1360.) Evidence Code section 1253 also allows the statement of a child under 12 made for the purpose of medical diagnosis or treatment to be used as evidence in a criminal child abuse case. (See also Pen. Code, §§ 1346-1347, that provide for introduction of videotaped testimony of a child 15 or under, and for examination of a witness 10 years or younger via closed-circuit television.)<sup>188/</sup>

**Expert testimony may be allowed at trial to explain a child abuse victim's** initial refusal to disclose the incident, later inconsistent accounts, and denial of some of the acts, all of which are symptoms of the Child Abuse Accommodation Syndrome. (*People v. Gray* (1986) 187 Cal.App.3d 213.)

**The California Supreme Court recently held that a defendant does not have a Sixth Amendment right** to have the trial court review, in camera and before the trial, privileged records sought from a psychologist of an under fourteen year-old victim of lewd and lascivious conduct by a defendant. (*People v. Hammon* (1997) 15 Cal.4th 1117.)

**A child representative may be appointed in child abuse or molestation cases.** (Pen. Code, § 1348.5.)

**An abused child can be removed from an unsafe environment and from an unfit parent or guardian.** Any person under the age of 18 can be placed under the juvenile court's jurisdiction if the child:

- Is in need of proper and effectual parental care or control and has no parent or guardian, or has no parent or guardian willing or capable of exercising such care or control; or
- Is destitute, is not provided with the necessities of life, or is not provided with a home or suitable place of abode; or
- ! Has a home that is unfit for him/her because of neglect, cruelty, depravity, or physical abuse by his/her parents or guardian.

**This means that the court can decide if the child should be made a dependent of the court.** To protect such a child from more abuse or neglect, a police officer may, without a warrant, take a child into temporary protective custody. If abuse is suspected, the officer may transport the child to either a hospital or special holding facility, with or without parental consent.

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188. In a recent case, the Court of Appeal ruled that allowing an eleven year-old child molestation victim to testify while his mother sat next to him did not violate the defendant's right to confrontation. (*People v. Johns* (1997) 56 Cal.App.4th 550.)

**If a child is found to be a victim of abuse or neglect, the court will determine what steps should be taken to protect the child.** Such steps may include keeping the child at home under the supervision of the local welfare or social services department, or placing the child with relatives, in foster care, or in other child care facilities (Welfare & Institutions Code, § 300 et seq.), or enjoining a parent, guardian or former household member from molesting, attacking striking, sexually assaulting or battering the child; excluding them from the dwelling; or prohibiting them from engaging in other behavior likely to disturb the child. (Welf. & Inst. Code, § 213.5.)

**In any civil action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action** is within eight years of the date the victim reaches the age of majority, or within three years of the date the victim discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever occurs later. (Code of Civ. Proc., § 340.1; the California Supreme Court held that this statute applied retroactively to victims' claims in *Tietge v. Western Province of the Servites, Inc.* (1997) 55 Cal.App.4th 382.)<sup>189/</sup>

**18 U.S.C. § 2251 et seq. sets forth penalties and provides a federal civil remedy for sexual abuse and other exploitations of children.** The federal government also shares funds and information to combat child abuse, pursuant to the terms of the Child Abuse Prevention and Treatment and Adoption Reform Act, 42 U.S.C. § 5101 et seq.

## **Who To Contact For Help**

**If your spouse, a person you are living with, or anyone you know is abusing a child, you should contact one of the following to get help:**

- ! Your local sheriff or police department.
- ! The child abuse and neglect hotline, council or center in your area (see "Child Abuse" in Chapter Nine, Directory of Services, at the end of this handbook.)
- ! The Child Protective Services unit of your local welfare or social services department. Other names may be--Human Resources

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189. The California Supreme Court has agreed to review the constitutionality of Penal Code section 803(g), which retroactively revives and extends the statute of limitations and criminal prosecution for one year after the alleged victim complains of the child molestation to the police, regardless of when the act itself took place. (*In re Davis*, Case No. S062716, review granted March 11, 1998 and *People v. Frazier*, Case No. S067443, review granted March 11, 1998.)

- Agency, Department of Public Social Services, Department of Health and Human Services, Department of Public Assistance.
- ! Your local county juvenile probation department.

**If you do not want to identify yourself, reports may be made anonymously to these agencies.** For investigation and follow-up, it is preferred, but not required, that the name and address of the reporter be volunteered. The most important thing, however, is the immediate protection of the abused child.

## **If You Need Help To Stop Abusing Your Child**

**If you, as a parent, caretaker, foster parent, guardian, or babysitter, feel you need help in dealing with the children for whom you are responsible, contact:**

- ! The child abuse hotline, council or center in your area.
- ! The Child Protective Services unit of your local welfare or social services department.

## **Specific Rules To Teach Your Children**

- ! Stay away from people who call you near their car, even if they offer to take you somewhere exciting.
- ! If someone tries to take you away, yell, "This person is not my father (or mother)" and scream.
- ! If you get lost in a store, find another mom or dad with children or go to the checkout counter. Do not wander around on your own.
- ! You don't have to keep secrets from your parents. No one can hurt your parents or pets if you tell what happened.
- ! No one should touch you in the parts covered by your bathing suit, and you should not be asked to touch anyone there.
- ! Don't let anyone take your picture without permission from your parents or teacher.

## **Parental Kidnapping**

**Parental kidnapping of children is considered to be a form of domestic violence and child abuse.** If your child is kidnapped by its other parent, you should call the police. By law (Pen. Code, § 14200 et seq.), the officer must take the report and enter it into the National Crime Information Center (NCIC) within four hours, listing the child as "at risk," if the kidnapper had no right under a custody or visitation order. The law also requires that a "Be on the Look-out" bulletin be broadcast without delay within the jurisdiction. Seek help from the section of your local

district attorney's office that deals with child abduction cases and ask it to help you obtain an order granting you sole physical custody of your child, if you do not already have one.

**If there is no custody order regarding the child in effect, the kidnapper** violated Penal Code section 278, which provides that in the absence of a custody order, the taking, detaining, concealing, or enticing away of a child by a parent, maliciously and without good cause<sup>190/</sup>, with the intent to deprive the other parent of his/her equal right to custody is a wobbler (it can be treated as a felony or misdemeanor), with a four-year maximum sentence, or a fine of up to \$10,000, or both. Section 278 also applies when a relative, such as a grandparent, aunt or uncle, or stepparent, commits an abduction.

**If the parents had a custody and visitation order regarding the child,** the kidnapper could be charged with a violation of Penal Code section 278.5, which provides that where there is a custody order giving each parent a right of physical custody or visitation, taking, detaining, concealing or enticing away a child with the intent to deprive the other of the right to custody or visitation is a wobbler, with a three- year maximum sentence, and a fine of up to \$10,000, or both. In this scenario, the police should take a report, but an NCIC entry may not be made and the case will not get priority handling by the police. (Fam. Code, §§ 3130-3135 mandate district attorney involvement in cases where a petition to determine custody has been filed or where a custody order is in place.)

**If it reasonably appears to a law enforcement officer that a parent will flee** the jurisdictional territory with a child, the officer can take the child into custody under Penal Code section 279.6 to prevent an abduction.

**See also the Federal Parental Kidnapping Act,** 28 U.S.C. § 1738A, which provides that full faith and credit is to be given to the custody order of another state.

## **If You Were Abused As A Child**

**Child abuse often leaves lasting scars.** Moreover, people who were abused as children are more likely to abuse their own children than people who were not abused as children. For your own sake and to help break the cycle, you might want

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190. Good cause means a good faith and reasonable belief that the taking, detaining, concealing or enticing away of the child is necessary to protect the child from immediate bodily injury or emotional harm or, if the person has been the victim of domestic violence, that the child, if left with the other person, will suffer immediate bodily injury or emotional harm. (Pen. Code, § 278.7.) In this circumstance, the parent who took the child should report the situation to the appropriate district attorney's office and commence a custody proceeding in court.

to see a private therapist, or look in your local phone book for organizations that counsel or sponsor group sessions for survivors of child abuse.

## **Elder Abuse**

**Domestic violence includes abuse<sup>191/</sup> against an elder or dependent adult.** Penal Code section 368 provides that a person guilty of abusing such a person shall be punished by imprisonment in the county jail for not more than a year, or by imprisonment in state prison for two to four years. The sentence can be enhanced if the victim suffers great bodily injury or is over 70 years old. A similar jail or prison sentence can be imposed, along with a fine not exceeding \$1,000, where a person is guilty of stealing or embezzling property, including labor, worth more than \$400, from an elderly or dependent adult.<sup>192/</sup> (See also Welf. & Inst. Code, § 15656.)<sup>193/</sup> A statute entitled the Elder Abuse and Dependent Adult Civil Protection Act, (Welf. & Inst. Code, § 15600 et seq.), which covers persons 65 years of age or older, provides that a custodian, health practitioner, employee of a county adult protective services agency or local law enforcement agency has a duty to report suspected physical abuse against an elderly person. The report must be made by phone, followed by a written report within two days. (Welf. & Inst. Code, § 15630.) The consent of the victim or a conservator or guardian of the victim is required before the report can be made, unless there has been a Penal Code violation. (Welf. & Inst. Code, § 15636.) Failure to report is a misdemeanor, punishable by not more than six months in the county jail, or a fine of not more than \$1,000, or by both the fine and imprisonment. (Welf. & Inst. Code, § 15630(h).)<sup>194/</sup>

**Civil actions can be brought for elder abuse, for which damages and attorney's fees are available, even after the victim's death.** (Welf. & Inst. Code, §§ 15657 and 15657.3.) The California Supreme Court accepted for review a case to determine whether damages for pain and suffering are authorized under this Act. (*Delaney v.*

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191. Abuse of the elderly can consist of physical abuse, psychological or emotional abuse, financial abuse, or physical neglect.

192. The constitutionality of the elder abuse statute was upheld in *People v. Superior Court (Holvey)* (1988) 205 Cal. App.3d 51, 58-60.

193. As of January 1, 1998, civil compromise is no longer available to perpetrators of elder abuse. (Pen. Code, § 1377.)

194. A non-custodial relative has been found not criminally liable for failure to prevent physical elder abuse because the relative had no legal control over the abusing caretaker. (*People v. Heitzman* (1994) 9 Cal.4th 189.)



*Baker*, Case No. S067060, review granted February 27, 1998.)

**Welfare and Institutions Code section 15670 provides for criminal background checks** to be performed on individuals who provide personal case services to elder and dependent adults in order to reduce the occurrence of elder abuse.

**Recently enacted California legislation authorizes law enforcement officials or other designated persons to take an endangered adult into emergency protective custody** and, where appropriate, to seek medical treatment for him or her. (Welf. & Inst. Code, § 15700 et seq.)

**A sentence can be enhanced where a defendant has attacked an elderly person.** (*People v. Dozier* (1979) 90 Cal.App.3d 174; Pen. Code, § 1170(b).) There is also a provision of the Penal Code specifying that probation can be denied or the suspension of a sentence can be denied for anyone who commits specified crimes and inflicts great bodily injury against a person who is 60 years of age or older. (Pen. Code, § 1203.09.) This section has been found not violative of the Equal Protection Clause by the California Court of Appeal. (*People v. Peace* (1980) 107 Cal.App.3d 996.)

# CHAPTER EIGHT

## CHILD CARE

### 4

**Ten percent of the nation's children live in California, and it is reported that 18% of those children under the age of 13 live in poverty.** It is estimated that 59% of children under 13 live in households in which either both parents or the single-parent head-of-house works outside the home. A single parent with one child in full-time child care, earning minimum wage, would be expected to pay approximately 47% of his/her wages for licensed child care. In California, it is estimated that in 1997 there are more than 12,700 licensed day care centers, and more than 52,000 family child care providers.<sup>195/</sup> As the number of families with two working parents and the number of single-parent households grow, the need for quality child care in California increases.

**Publicly-subsidized child care in California is divided between center-based care, in which children attend a licensed center, and family-based care,** in which parents choose from a variety of child care options. This chapter describes state and federally-subsidized child care programs, as well as other options available to parents with dependent children. The reference list at the end of this chapter may assist you in finding child care and in answering your particular questions. Families who do not qualify for subsidized child care may also use the resources of the California Resource and Referral Network listed at the end of this chapter for information on child care providers in their area.

## PUBLICLY-SUBSIDIZED CHILD CARE AND RELATED SERVICES

**The Department of Education, Child Development Division, administers, or contracts with publicly-subsidized child care programs listed in this section.** (Ed. Code, § 8262.) The reference list at the end of this section for the Department of

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195. The information in this section was provided by the California Department of Education, Child Development Division, and *The California Child Care Portfolio*, (February 12, 1997), issued by the California Child Care Resource & Referral Network.

Education will provide you with a starting point to obtain additional information for any of the subsidized child care programs listed. The funds for publicly-subsidized child care programs come from federal block grants, state funds and some local funds.<sup>196/</sup>

**Families are eligible for state-funded child care programs if they meet at least one requirement in each of the following areas:** 1) a family is a current aid recipient, income-eligible,<sup>197/</sup> homeless, or one whose children are recipients of protective services, or who have been identified as being abused, neglected or exploited or at risk of being abused, neglected or exploited; 2) a family needs the child care service because the child is identified by a legal, medical, social service agency or emergency shelter as a recipient of protective services; being neglected, abused or exploited or at risk of neglect, abuse or exploitation; or having a medical or psychiatric special need that cannot be met without the provision of child care; or the parents are engaged in vocational training leading directly to a recognized trade, paraprofession or profession; employed or seeking employment, seeking permanent housing for family stability, or incapacitated, including a medical or psychiatric special need that cannot be met without the provision of child day care. (Ed. Code, § 8263(a)(1) and (2).)

**The amount of fees a family pays is determined by the family's annual income** and the services to be provided to its children. (Cal. Code Regs., tit. 5, § 18108.)

**Ordinarily, a physical examination and evaluation, including age-appropriate immunization, shall be required prior to, or within six weeks of enrollment.** (Ed. Code, § 8263(d).)

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196. In August 1996, the U.S. Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193, 110 Stat. 2105, 8 U.S.C. § 1601 et seq., the "Welfare Reform Act"), that enacted a series of federal welfare and public assistance reforms. The federal reforms limit the amount of public assistance available and restrict eligibility (with minor exceptions) for assistance to U.S. citizens and qualified aliens. Illegal, and some legal immigrants, will not be eligible to receive public assistance under these reforms. Proposition 187, passed by California voters in 1994, limits state-funded public assistance to U.S. citizens, legal permanent resident aliens, and certain legal temporary resident aliens. Proposition 187 is under legal challenge, as are portions of the federal welfare reforms. You are advised to speak with the California Department of Education for an update on eligibility requirements.

197. At present, eligibility for participating in state-funded child care programs (except for State Preschool, Severely Handicapped and Federal-Based Migrant Families) is limited to families whose adjusted monthly income is at or below 84% of the state's median income, adjusted for family size at the time of initial enrollment and does not exceed 100% of median income, adjusted for family size. Eligibility is based upon the year of enrollment, as determined by the Superintendent of Public Instruction. (Ed. Code, §§ 8261 and 8263; Cal. Code Regs., tit. 5, § 18078.)

**Children 14 years and under are eligible to receive state-funded child care services, although children with exceptional needs or who are severely handicapped can receive child care up to the age of 21.** (Ed. Code, § 8265.5.)

**Programs funded with federal funds** are governed by regulations contained at 45 C.F.R. §§ 255-257, pursuant to 42 U.S.C. §§ 602-603. There are three main federal programs. The first is child care provided to parents during their participation in employment, education and training. This child care must be guaranteed to a dependent child who is under 13,<sup>198/</sup> physically or mentally incapable of caring for himself/herself (based upon a determination by a physician or psychologist), or under court supervision, to the extent that such child care is necessary to permit an AFDC-eligible<sup>199/</sup> family member to accept employment or remain employed, or to participate in an approved education or training activity. (45 C.F.R. § 255.2.)

**Child care must be provided for a period not to exceed two weeks for an individual waiting to enter an education or training program** or to commence employment, or for a period not to exceed one month where child care arrangements would otherwise be lost and the education or training program or employment will begin within that period. It must also be provided while a parent participates in a job search or other approved activities in preparation for employment. (45 C.F.R. § 255.2(d)(1) and (2).)

**Federally-funded transitional child care** is available to families whose AFDC assistance has ceased, due to increased hours of, or earnings from employment, or as a result of the loss of income disregards pursuant to 45 C.F.R. § 233.20(a)(11). (45 C.F.R. § 256.0.) The eligibility requirements are similar to those governed by 45 C.F.R. § 255, except that the family must also have received AFDC in at least three of the six months immediately preceding the first month of ineligibility, have requested transitional child care benefits, and have provided the information necessary for determining eligibility and fees.

**Eligibility begins with the first month for which the family is ineligible for AFDC** and continues for a period of 12 consecutive months. The family is not eligible if the caretaker relative terminates employment without good cause, or fails to

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198. According to 42 U.S.C. § 9858n(4), an eligible child must also come from a family whose family income does not exceed 85% of the state median income for a family of the same size, and must reside with a parent or parents who are working or attending a job training or educational program or must be receiving or must need to be receiving protective services.

199. AFDC, or Aid to Families with Dependent Children, has been replaced by TANF, or Temporary Assistance for Needy Families, under the Welfare Reform Act. This chapter will continue to use the term AFDC, because the statutes and regulations have not yet been amended to reflect this change.

cooperate with a state agency in establishing payments and enforcing child support obligations. (45 C.F.R. § 256.2.) The family must be required to contribute toward the payment of such care, based on ability to pay. (45 C.F.R. § 256.3.)

**Finally, federal funding is available for at-risk child care programs for low-income working families** who need child care in order to work and are at risk of becoming eligible for AFDC. (45 C.F.R. § 257.1.) A family is eligible for this child care if it is low-income, is not receiving AFDC, is at risk of becoming eligible for AFDC, needs such child care in order to accept employment or remain employed, and meets any other conditions imposed by the state. This child care can be provided to any child under 13, or to any child under age 19, if he/she is physically or mentally incapable of caring for himself/herself, or under court supervision.

**The state may provide this child care if child care arrangements would otherwise be lost** for up to two weeks prior to the scheduled start of employment, or for up to one month during a break in employment, if subsequent employment is scheduled to begin within that period. (45 C.F.R. § 257.30.) A sliding fee for child care can be charged, based on ability to pay, and contributions may be waived for families whose income is at or below the poverty level for a family of the same size. (45 C.F.R. § 257.31.)

**The demand for subsidized child care far exceeds available funds, so priorities for services have been established. First priority is given to neglected or abused children** who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a legal, medical or social service agency. When an agency is unable to enroll a child, it shall refer the family to local resource and referral services.

**Second priority shall be equally given to eligible families, regardless of the number of parents in the home, who are income-eligible.** Within this priority, families with the lowest gross monthly income in relation to family size, as determined by a schedule adopted by the superintendent of education, shall be admitted first. When two or more families are in the same priority in relation to income, the family that has been on the waiting list for the longest amount of time shall be admitted first. For purposes of determining order of admission, the grants of public assistance recipients shall be counted as income.

**The superintendent of education shall set criteria for and may grant specific waivers of these priorities** for agencies that wish to service specific populations, including disabled children or children of prisoners. These new waivers shall not include proposals to avoid appropriate fee schedules or admit ineligible families, but may include proposals to accept members of special populations in other than strict income order, so long as appropriate fees are paid.

**In order to promote continuity of services, a family enrolled in a state or federally-funded child care and development program whose services would otherwise be terminated** because the family no longer meets the program income, eligibility, or need criteria can continue to receive child development services in another state or federally-funded child care and development program if the contractor is able to transfer the family's enrollment to another program for which the family is eligible prior to the date of termination of services, or to exchange the family's existing enrollment with the enrollment of a family in another program, provided that both families satisfy the eligibility requirements for the program in which they are being enrolled. (Ed. Code, § 8263.)

## **General Child Care Program**

**The General Child Care Program provides comprehensive child development services for low-income parents** who are either working, looking for work, in training, or are homeless. Parents of children who are physically or mentally incapacitated are also eligible. This program also provides child development services to children who are neglected, abused, or exploited, or are at risk of being so. General child care programs are often run by public agencies, such as school districts or county offices of education. Most of the programs run by public agencies are center-based and provide nutrition and parental education, as well as information on child development and care. Some general child care programs are operated through private agencies, such as local community action organizations or nonprofit corporations. General child care programs vary as to the time and dates when care is available. (Ed. Code, §§ 8240 et seq.; Cal. Code Regs., tit. 5, § 18077 et seq.)<sup>200/</sup>

## **Campus Child Development Programs**

**Campus child care centers provide care for children of students**<sup>201/</sup> in California community colleges, four-year colleges, and the University of California system. Child care may be provided all day or may be adjusted to a parent's class schedule. These centers may also serve as training sites for students in college child development classes. Programs are funded by a combination of parent fees, student body fees, and state funds. (Ed. Code, § 66060; Cal. Code Regs., tit. 5, §

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200. All center-based child care programs, regardless of the source of the funding, are required to comply with the Americans with Disabilities Act (ADA), including its provisions for barrier removal and program access. (42 U.S.C. §§ 12101 et seq.)

201. Children of students have first priority for enrollment in such programs. (Ed. Code, § 66060(b).)

18175.)

## **Migrant Child Care**

**The Migrant Child Care and Development Program provides child care** and development and related services to children of "migrant agricultural worker families"<sup>202/</sup> working in fishing, agricultural, or related industries during peak periods in those industries, usually between May and October.<sup>203/</sup> Centers offering this type of child care are operated by county offices of education, school districts and private nonprofit agencies. (Ed. Code, §§ 8231-8233; Cal. Code Regs., tit. 5, § 18190 et seq.)

**In 1994, the Legislature established a three-year Pilot Migrant Family Day Care Program** that trains and supports migrant workers to become family day care home providers to take care of migrant preschool children. To be eligible to participate, a family must be a "migrant agricultural worker family," be income-eligible according to section 18078 of Title 5 of the California Code of Regulations, and derive the principal source of its income from agricultural work. (Ed. Code, § 8234.)

## **School Age Parenting and Infant Development Program**

**The School Age Parenting and Infant Development Program, or SAPID,** was established to assist mothers to complete junior high and high school, and to provide child care for their infants during the school day. In addition to providing child care, SAPID requires parenting classes and counseling for the school-age parents while they finish high school. These programs are operated by public high schools free of charge, and are located on or near high school campuses. There is no income eligibility requirement for SAPID programs. (Ed. Code, §§ 8390 et seq.; Cal. Code Regs., tit. 5 § 18140 et seq.)

## **Special Programs for Children with Severe Disabilities**

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202. A "migrant agricultural worker family" means a family that has earned at least 50% of its total gross income from employment in fishing, agriculture, or agriculturally-related work during the 12-month period immediately preceding the date of application for child care and development services. (Ed. Code, § 8231(a).) In addition to meeting the criteria for being an agricultural worker family pursuant to Education Code section 8231(a), Section 18191 of Title 5 of the California Code of Regulations provides that the family shall also meet the eligibility and need criteria specified in Education Code section 8263(a)(1) and (a)(2), as discussed, *supra*.

203. See footnote 196, *supra*, for information on possible restrictions on the eligibility of legal and illegal immigrants.

**Special programs for severely handicapped<sup>204/</sup> children** provide supervision, care therapy, youth guidance and parental counseling to eligible families at no charge. This program is currently very small and only available in the Bay Area. The federal government also provides funds for infant and preschool programs for children with severe disabilities. Severely disabled children, from infants to 21 years of age, are eligible for these services. (Ed. Code, § 8250 and 8265.5; Cal. Code Regs., tit. 5 § 18210 et seq.; 20 U.S.C. §§ 1419 et seq. and 1475 et seq.; 34 C.F.R. § 301 et seq. and 303 et seq.)

## **State Preschool**

**State preschool programs provide partial-day child care and related services** to prepare three to five-year-old children from low income families<sup>205/</sup> for kindergarten. Priorities are given to children who are recipients of child protective services, or who are at risk of being neglected or abused, and to four-year olds. The preschools offer educational and social services, as well as health and nutrition programs. The preschools emphasize parental education and involvement. Often, the children and parents participating in state preschools speak limited English. Therefore, some programs have bilingual components. State preschools are administered by school districts, county offices of education and private agencies. (Ed. Code, §§ 8235 and 8236; Cal. Code Regs., tit. 5 § 18130 et seq.)

## **Alternative Payment Programs**

**Alternative payment programs offer parents** the choice of deciding on the type and style of child care best suited for each child. Eligible child care providers include in-home care by family members or baby-sitters, licensed family child care homes, and center-based care. The parents choose a child care provider.<sup>206/</sup> If the provider is eligible, the alternative payment program pays the child care provider directly once a month. This program is similar to the General Child Care program. (Ed. Code, §§ 8220, et seq.; Cal. Code Regs., tit. 5, § 18220 et seq.)

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204. "Severely handicapped" means the child has a physical, mental or emotional handicap of such severity that he/she cannot be adequately or appropriately served in a regular child care and development program, as determined by the individualized Education Plan (IEP) required by section 18212 of title 5 of the California Code of Regulations. (Cal. Code Regs., tit. 5 § 18211.)

205. If no eligible children are on the waiting list, the facility can accept up to 10% of its enrollment who do not meet the age or income requirements. (Cal. Code Regs., tit. 5 § 18133.)

206. If eligible, relatives of a child can qualify and receive payments for caring for the child in the home of the relative.



## **Child Protective Services**

**Child protective services operate programs through local welfare agencies**, that contract with local nonprofit agencies and referral services. These groups provide temporary, emergency child care to children who are at risk and in need of protective services, and who are ineligible for other state or federally-subsidized child care. (Ed. Code, § 8252.)

## **Sick Child Care**

**All child care and development programs should include plans or programs for the care of sick children.** (Ed. Code, § 8251.)

## **School Age Community Child Care Services (LATCHKEY)**

**The Latchkey program provides extended-day programs** in safe environments for school age children during the hours immediately before and after school and during vacations. Latchkey programs are operated by school districts and nonprofit organizations. At least half of all program costs must be paid for through parent fees. (Ed. Code, §§ 8460 et seq.)

**Priority for enrollment in these programs is as follows: First priority shall be given to recipients of child protective services** for children who are neglected or abused, or at risk of being neglected or abused, upon written referral from a legal, medical, social service, or public agency. Within this priority, families with the lowest gross monthly income shall be admitted first. When an agency is unable to enroll a child in need of protective services, the agency shall refer the family to local resource and referral services to locate services for the child.

**Second priority shall go to children in kindergarten and grades 1 to 3, inclusive, and their schoolage siblings** under the age of 13 years, whose families need extended day care service because parents are engaged in vocational training leading directly to a recognized trade, paraprofession or profession; are employed or seeking employment; or are incapacitated. Within this priority, families with the lowest gross monthly income in relation to family size shall be admitted first.

**Third priority shall go to children in grades 4 to 9, inclusive, and their school age siblings** under 13 years, whose families need extended day care services because of the same reasons mentioned in the second priority category above. Also within this priority, families with the lowest gross monthly income in relation to family size shall be admitted first.

**Agencies may apply to the Superintendent of Public Instruction for a waiver of these priorities.**

**Each program shall serve individuals with exceptional needs**, as defined in Education Code section 56026. The percentage of children who are individuals with exceptional needs in each program shall be at least equal to the percentage of children in kindergarten and grades 1 to 8, inclusive, residing in the school district and receiving special education services, unless the demand for this level of service does not exist.

**In order for an extended day care program to receive funding** for a child served, the child's family must meet at least one requirement in each of the following areas:

- 1) A family shall be one of the following:
  - (a) a recipient of benefits under the AFDC program, the Supplemental Security Income/State Supplementary Program, or a general assistance program;
  - (b) income eligible;
  - (c) one whose children are recipients of protective services, or whose children have been identified as being abused, neglected or exploited or at risk of being abused, neglected or exploited.
- (2) A family shall need the child care service because the requirements of either (a) or (b) apply:
  - (a) The child is identified by a legal, medical or social service agency as meeting one of more of the following criteria: the child is a recipient of protective services, the child is neglected, abused, or exploited, or at risk of neglect, abuse or exploitation, or the child has a medical or psychiatric special need that cannot be met without the provision of extended day care, or
  - (b) the child's parents meet one of the following criteria: the parents are engaged in vocational training leading directly to a recognized trade, paraprofession, or profession, the parents are employed or seeking employment, or the parents are incapacitated, including a medical or psychiatric need that cannot be met without the provision of extended day care. (Ed. Code, § 8468; Cal. Code Regs., tit. 5 § 18200 et seq.)

## **Head Start**

**Head Start programs are administered and funded by federal agencies** for children of primarily low-income, disadvantaged families. To be eligible for Head Start, a child generally must be at least three years old by the date used to determine eligibility for public school in the community in which the program is located. At least 90% of the children enrolled in Head Start must be from low-income families. The other 10% may be children from families that exceed the low-income guidelines, but who meet other criteria. (45 C.F.R. § 1305.4.)

**Head Start Programs are mostly partial-day programs that operate during the school year.** Parent participation is required. Head Start is similar to the state preschool program. In some cases, Head Start and state preschool programs may be combined. (42 U.S.C. §§ 9831 et seq.; 45 C.F.R. §§ 1301-1306 and 1308.) The program is usually provided free of charge. (42 U.S.C. § 9840(b).)

## **Child Development Centers**

**Child development centers are programs for children under two whose parents are students at a community college.** There is no income eligibility requirement. Programs are paid for by student fees, parent fees and private funds.

**Children of students attending school at a particular campus shall have first priority for attendance at a child development center at that campus.** Highest priority shall be given to student families with the greatest income deficit, and lowest priority to student families with the greatest income.

**For the purposes of assigning eligibility priority,** applicant student families shall be grouped according to the amount of their income in one-hundred-dollar (\$100) monthly increments. All student families within a particular income range shall be treated as if their incomes were the same, and priority for eligibility within each particular income range shall be assigned on the following basis: (1) single-parent student families, and (2) two-parent families, where both parents are students or where one parent is a student and the other is working. Student families who are recipients of public assistance shall be subject to the same assignment of priority as other student families whose incomes fall in the same income range. (Ed. Code, §§ 79120 et seq.)

## **Cooperative Agencies Resources For Education Programs**

**Education Code section 79150 et seq. provides for the establishment of cooperative agencies resources for education programs in cooperation with the California Community Colleges.** These provide additional funds for support services, including child care. Participants shall be at least 18 years of age, single

heads-of-household, be receiving AFDC, and be desirous of completing their high school education or pursuing a job-relevant curriculum. (Ed. Code, § 72152.)

## **California Child Care Initiative Project**

**This pilot program trains family child care providers and assists them to become licensed providers.** The program is scheduled to end June 30, 2000. The training program is a joint initiative, with state, federal and local funds combined with private corporate funds. The program requires that there be \$2 spent in private, federal or local funds for every \$1 spent by the state. (Ed. Code, § 8215.)

## **Indirect Subsidies for Child Care**

**In addition to direct subsidies of child care for low-income families, both the state and the federal government indirectly subsidize a portion of the cost of child care in the United States.**

## **State Child Care Tax Credit**

**The following information is not meant to replace the advice of a qualified accountant or tax attorney.** You are advised to contact a tax professional for individual questions regarding possible tax credits for your child care costs.<sup>207/</sup>

**To encourage employers and landlords to establish child care programs for their employees or tenants, the state grants employers and landlords a tax credit against their net taxes for each taxable or each income year for the cost of establishing or constructing a child care facility** or for contributing to child care information and referral services. The employer or landlord is allowed a tax credit of 30% of any of the following costs: 1) the cost incurred for the startup expenses, on or after September 23, 1988, of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayers' employees; 2) for each year after January 1, 1993, the cost incurred for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of employees of tenants leasing commercial or office space in a building owned by the taxpayer, or 3) the cost incurred by the taxpayer, on or after September 23, 1988, for contributions to California child care information and referral services. These tax

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207. U.S. Congressional leaders and the President of the United States recently reached a balanced budget agreement, that will provide child tax credits to over 3 million families in California and will provide tax credits to California students.

credits shall not exceed \$50,000 per year. (Rev. & Tax. Code, §§ 17052.17 and 23617.)

**In lieu of claiming the tax credit, the taxpayer may take depreciation** pursuant to Revenue and Taxation Code section 17250. The credit can be carried over to the next tax year under certain circumstances. (Rev. & Tax. Code, §§ 17052.17(e) and (g) and 23617(e) and (g).)

**No credit is allowed if the taxpayer is required by any local ordinance or regulation to provide a child care facility.** (Rev. & Tax. Code, §§ 17052.17(i) and 23617(i).)

**Employers may also receive yearly tax credits for each taxable or income year of 30% of the cost of the contributions to a qualified care plan made on behalf of any qualified dependent of a qualified employee, up to a maximum of \$360 per child.** This credit can also be carried over. (Rev. & Tax. Code, §§ 17052.18 and 23617.5.)

## **Federal Child Care Tax Credit**

**Parents may be eligible for federal tax credit based on their expenses for child care.** The federal child care tax credit presently allows parents to claim a percentage of their household and dependent care expenses as a credit, up to a certain dollar amount, on their federal tax returns. The tax credit is based on the income of the parents and the cost of the child care. Your tax preparer should be able to provide you with the percentage applicable in your situation. To qualify for tax credits, the child care must be necessary for the parents to maintain or obtain employment. The children must be dependent on the taxpayer and under 13 years of age, unless they are physically or mentally incapable of caring for themselves. (26 U.S.C. § 21(b)(1).)

**The federal credit is nonrefundable**, so only those families with enough income to have a tax liability can take advantage of it. There are provisions in the law for advance payment of the tax credit. If eligible for the advance payment, less federal taxes would be taken out of a worker's paycheck, leaving more money with which to purchase child care. (26 U.S.C. § 21.)

## **Private Child Care**

### **In-Home Child Care**

**In-home child care is care for children in their own home.** It may involve paid or

unpaid care by a relative, friend, housekeeper, nanny or au-pair. Such care is usually paid for by the parent. State and federal employment laws are generally applicable to paid providers of in-home child care.

## **Family Day Care Homes**

**Family day care homes provide child care in a home setting for less than 24 hours per day while the parents or guardians are away.** There are large family homes licensed to care for seven to 14 children, including children under the age of 10 who reside at the home, or small family homes licensed to care for eight or fewer children, also including children under the age of 10 who reside in the home. (Health & Saf. Code, § 1596.78.) State law requires family day care homes to be licensed through the Department of Social Services. (Health & Saf. Code, § 1596.803 et seq.) Providers caring for children from only one family (other than their own) are exempt from the licensing requirement. (Cal. Code Regs., tit. 22, § 102358(a).) Child care is provided in family day care homes and paid for by the parents, or through alternative payment programs.

## **Private Child Care Centers**

**Private child care centers are sometimes called nursery schools or preschools.** They include church-related programs and parent co-ops. Private child care centers are operated with private funds, usually fees and/or donations collected from parents. Services are available to children from infancy through school age. Some private centers include private child care and elementary schools starting with kindergarten, so that children can attend school and have child care at the same location. Private programs are varied and may be full day, partial-day or a combination thereof, according to the needs of the parents and children. More than 7,000 of these private facilities are licensed by the Department of Social Services in California. The California Child Care and Resource Referral Network may provide you with a listing in your area. (See listing at end of chapter.)

## **Work Site Child Care**

**Work site child care is care located at the parent's place of work.** Employers may receive a tax credit if they establish or contribute to an employee child care facility. (See discussion of tax credits, *supra*.) Space may be rented and the program operated by parents, organizations or unions. The State of California, for example, has a number of public work site child care facilities available to state workers. (See discussion below.)

## **Child Care Facilities in State Buildings**

**When the state constructs or significantly alters buildings that can accommodate more than 700 state employees, the state shall provide on-site accommodations to meet the child care needs of its employees,** if more than 30 children need child care and the employee-occupants follow certain steps.

**The employee-occupants must be notified of the availability of space to be used for the child care facility** no earlier than 180 days prior to the projected date of occupancy of the new building or space. They must file an application with the Secretary of State as a nonprofit corporation for the purpose of organizing a child care center, deposit two months' rent in a commercial or savings account, and enter into a contract with the Department of General Services within 30 days after full occupancy or completion of the alterations. If these steps are not taken, the space may be used for certain other purposes, but must be reconverted for use as a child care facility within 180 days of notice that the employee-occupants have subsequently taken the above actions.

**Children of whom at least one parent or guardian is a state employee shall be given priority for admission to the center, over other children.**

**Child care facilities are not required for state buildings that provide 24-hour residential care** for patients, inmates, or wards of the state, such as state hospitals or correctional facilities. (Gov. Code, § 4560.)

**Government Code section 4561 provides that child care facilities for the employees of the California State University and Colleges and the University of California shall be incorporated into the campus master plans,** and constructed subject to the provision of state funding appropriations by the Legislature. Determination of the need for, eligibility for use and utilization of these facilities shall be subject to the terms and conditions of the trustees and regents.

**Government Code sections 4560 and 4561 are not applicable to any state-owned transportation facility.** Space at these facilities may be leased by competitive bid, taking into account the affordability and quality of child care, to a child care operator licensed pursuant to section 1596.80 of the Health and Safety Code.

**First priority for child care services provided by the center shall be given to children of state employees who work at the transportation facility,** and second priority shall be given to children of users of the transportation facility.

**No state funds shall be provided to any child care operator at a state-owned transportation facility** unless all of the following conditions are met:

1) the child care facility is open to children without regard to any child's religious

beliefs or any other factor related to religion, 2) no religious instruction is included in the child care program, and 3) the space in which the child care program is operated is not utilized in any manner to foster religion during the time it is used for child care. (Gov. Code, § 4563.)

## **Child Care Facilities Serving Federal Employees**

**If any individual or entity that provides or proposes to provide child care services for federal employees** applies to the officer or agency of the United States charged with the allotment of space in the federal buildings in the community or district in which such individual or entity provides or proposes to provide such services, such officer or agency may allot space in such building to such individual or entity if: 1) such space is available, 2) such officer or agency determines that such space will be used to provide child care services to a group of individuals, at least 50% of which are federal employees, and 3) such officer or agency determines that such individual or entity will give priority for available child care services in such space to federal employees. (40 U.S.C. § 490b(a).)

**If an officer or agency allots space to an individual or entity under 42 U.S.C. § 490b(a), such space may be provided to such individual or entity without charge for rent or services.** (42 U.S.C. § 490b(b).)

**20 U.S.C. § 2564 authorizes the Secretary of Health and Human Services to contract or otherwise establish, equip and operate day care center facilities** to serve children who are members of households of employees of the Department of Health and Human Services. The Secretary of Health, Education and Welfare is granted similar authority by 20 U.S.C. § 3477(b) for employees of that department.

## **Safety Provisions for Child Care Facilities**

**The safety of children at child care facilities has become an increasingly important issue.** Upon presentation of identification, a parent has a right to enter and inspect a day care facility without prior notice during the normal operating hours of the facility, or at any time that the child is receiving services in the facility.

**Access can be denied to an adult whose behavior presents a risk to children present in the facility,** and it can be denied to noncustodial parents or guardians if so requested by the responsible parent or legal guardian.

**No facility can discriminate or retaliate against a child or its parent or guardian for exercising the right of access** or lodging a complaint with the Department of Social Services against a facility. If the facility denies a parent or legal guardian the right



to enter and inspect a facility, it receives a warning from the department and for any subsequent violation, the facility can be fined \$50 or have its license revoked. Written notice of these rights is to be posted in the facility. (Health & Saf. Code, § 1596.857.)

**Parents or guardians must be given a copy of a child abuse pamphlet by a family day care home when they become clients.** (Cal. Code Regs., tit. 22 § 102419.)

**The state and federal legislatures have also passed laws to protect children from persons convicted of crimes against children by disclosing the whereabouts of registered sex offenders** and requiring child care workers to have background checks before working with children.

**Before the Department of Social Services grants a license to or otherwise approves a family day care home, the Department must run a background check of the child abuse and neglect records** of the child protective services agency of the county in which the applicant has resided for the two years preceding the application. (Health & Saf. Code, § 1596.877.) Prior to granting a license or otherwise approving any individual to care for children in a family day care home or day care center, the department must check the Child Abuse Registry pursuant to section 11170(b)(3) of the Penal Code. The department shall investigate any reports received from the Registry and any information received from the county child protective services agency.

**Substantiated child abuse is grounds for denying a child care facility license to an applicant.** (Cal. Code Regs., tit. 22, § 102391 and 1596.885(c).)

**Each licensed child day care center shall make accessible to the public a copy of any licensing report pertaining to the facility** that documents a site inspection or substantiated complaint investigation. These reports need only be kept for three years. (Health & Saf. Code, § 1596.859.)

**A person seeking employment in a child care facility is required to provide fingerprints.** Before issuing a license or special permit to any person to operate or manage a day care facility, the department is required to secure from an appropriate law enforcement agency a criminal record to determine whether the applicant, or other persons providing care to and supervision of children, or certain executives of the facility have ever been convicted of a crime, other than a minor traffic violation, or been arrested for any crime specified in Penal Code section 290 (that covers various sex and other violent offenses), or arrested for violating Penal Code sections 245 (assault with a deadly weapon or by force likely to produce great bodily injury), 273.5 (battery of a spouse, cohabitee or parent of his child), 273a(b) or 273a(2) prior to January 1, 1994 (child abuse), or for any crime for which the

department cannot grant an exemption<sup>208/</sup> if the person was convicted and the person has not been exonerated. If the person was convicted of a crime, other than a minor traffic violation, the Department of Justice must notify the department of that fact, and the application shall be denied, unless the department grants an exemption.

**If it is determined by the department that the person has been convicted of a sex offense against a minor**, or has been convicted of an offense specified in Penal Code section 243.4 (sexual battery), 273a (child abuse), 273d (infliction of corporal punishment or injury on a child resulting in a traumatic condition) or 368(a) or (b) (infliction of physical pain or mental suffering on elder or dependent adult) or has been convicted of a felony, the department shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the facility. (Health & Saf. Code, § 1596.871.)

**Every agency of the federal government and every facility operated by the federal government (or operated under contract with the federal government) that hires (or contracts for hire) individuals involved with the provision of child care services to children under the age of 18, must conduct a criminal history background check on every employee and applicant for employment.** Results of the background check will be communicated to the employing agency. Criminal convictions for sex offenses, offenses involving a child victim, and drug felonies may be grounds for denying or terminating employment.

**Conviction of a crime other than a sex crime can be considered if it bears on an individual's fitness to have responsibility for the safety and well-being of children.** Employment applications for the positions described above shall require the applicant to state under penalty of perjury whether he/she has been arrested for or charged with a crime involving a child and to provide a description of the disposition of the arrest or charge. (42 U.S.C. § 13041.)

## **Trustline Registry**

**To assist parents and child care employers, the Department of Justice has established a trustline registry.** Any child care provider who possesses a valid California driver's license, a valid Department of Motor Vehicles identification card, a valid Alien Registration Card, or a valid numbered photo identification card issued

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208. The department can grant an exemption if the person is of good character, based on the age, seriousness and frequency of the conviction or convictions. (Health & Saf. Code, § 1596.871(c)(4) and (f).)

by an agency of a state other than California, can initiate a background examination process, as set forth in Education Code section 8170 et seq. The Department of Justice will check the criminal background of the employee by checking the California Criminal History System (Pen. Code, § 11105 et seq.) and the California Child Abuse Central Index, and upon request, and the provision of an additional set of fingerprints, the records of the Federal Bureau of Investigation.

**Upon completion of the searches, if no reported criminal conviction or substantiated child abuse information that would disqualify the provider** from being licensed by the Department of Social Services as a child care provider is found, the Department of Justice shall enter that finding in the provider's record in the trustline registry and notify the provider of that action.

**If the search reveals a reported criminal conviction or substantiated child abuse information for which the provider could not receive an exemption,** the department shall notify the provider that it is not, or is no longer, a registered trustline provider and its record shall be removed from the registry. If an exemption could have been granted, the Department of Justice will either register the provider or deny the registration. (Ed. Code, § 8172.)

**It is a misdemeanor for a person to falsely represent itself as a registered trustline child care provider or as having applied for such registration.** (Ed. Code, § 8172.5.)

**You may call the California Child Care and Resource Referral Network for directions on obtaining toll-free information by phone from the trustline registry as to whether your child care provider is registered.** (Ed. Code, § 8174.)

**Every child care provider who is compensated, in whole or in part, with funds** provided through the Alternative Payment Program (Ed. Code, § 8220) or pursuant to the federal Child Care and Development Block Grant Program (except a provider who is, by marriage, blood or court decree the grandparent, aunt or uncle of the child in care) shall be registered in the trustline registry in order to receive this compensation, to the extent permitted by federal law. The California Child Care Resource and Referral Network shall notify the applicable local child care resource and referral agencies, alternative payment programs and county welfare departments of the status of trustline applicants and registrants. (Ed. Code, § 8180.)

## **Child Abuse Reporting Requirements**

**Any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, humane society officer, or clergy member who, in his/her professional capacity, has knowledge of**

**or observes a child whom he/she knows or reasonably suspects has been the victim of child abuse must report that information by phone as soon as practical to a child protective agency** and prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

**Any commercial film and photographic print processor who has knowledge of or observes,** within the scope of his/her professional capacity or employment, any film, photograph, videotape, negative or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the suspected child abuse to the law enforcement agency having jurisdiction as soon as practically possible by phone, and shall send a written report within 36 hours.

County probation and welfare departments and law enforcement agencies also have reporting responsibilities.

**When a child protective agency receives either of the following, it shall, within 24 hours, notify the licensing office** with jurisdiction over the facility: 1) a report of abuse alleged to have occurred in the licensed child care facility or 2) a report of the death of a child living at, enrolled in or regularly attending a licensed child care facility, unless the circumstances of the death are clearly unrelated to the child's care at the facility. (Pen. Code, § 11166 et seq.)<sup>209/</sup>

**The Department of Justice maintains an index report on all child abuse reported pursuant to Penal Code section 11166, et seq.** The information maintained in the Department of Justice's index report may be disclosed to child protective agencies, the district attorney, the Department of Social Services, or any county licensing agency responsible for licensing in-home care providers, child care providers or residential facilities. The investigating agency will inform the person filing the child abuse report of the final disposition of the investigation. (Pen. Code, § 11170.)

**Persons required to file a child abuse report pursuant to the reporting requirements of Penal Code section 11166 et seq., are immune from criminal or civil liability for filing the report,** or for taking or disseminating photographs of the victim without parental consent, or for providing access to the victim. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability unless it can be proven that a false report was made and the person knew that the report was false or the report was made with reckless disregard of the truth or falsity of the report.

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209. For additional information on child abuse, please refer to the chapter on Violent Crimes Against Women and Children.

**Persons sued for reporting child abuse, may file a claim with the State Board of Control** for reasonable attorney's fees for defending the suit if the court has dismissed the action upon a demurrer or motion for summary judgment, or if they prevail in the action.

**A court may award attorney's fees to a commercial film and photographic print processor** when a suit is brought against him/her because of a disclosure required by law and the court finds the suit to be frivolous.

**Any person who fails to report an instance of child abuse which he/she knows to exist**, or reasonably should know to exist, as required by law, is guilty of a misdemeanor, punishable by a jail term not to exceed six months, or by a fine of not more than \$1000, or by both jail sentence and fine. (Pen. Code, § 11172.)

**There is also a federal law** requiring certain covered professionals, while engaged in a professional capacity or activity on federal land or in a federally-operated facility, to report suspected incidents of child abuse to a designated federal agency. (42 U.S.C. § 13031 et seq.)

## **California Child Care Resource & Referral Network**

**The California Child Care Resource and Referral Network is a state-funded organization** that provides information about child care in every county in the state, including information about the trustline registry for child care providers. This organization provides parents with educational information and referral services for both public and private child care providers. The referral and education programs are available to anyone, regardless of financial need. (Ed. Code, §§ 8212-8215.) The address and phone number for this service is listed at the end of this section.

**The Network can also provide short-term respite child care to do the following:** 1) provide services to families identified and referred by child protective agencies, 2) relieve the stress caused by child abuse, neglect, or exploitation, or the risk of abuse, neglect, or exploitation, 3) assist parents who, because of serious illness or injury, homelessness, or family crisis, including temporary absence from the home because of illness or injury, would be unable without assistance to provide the normal care and nurture expected of parents, and 4) provide temporary relief to parents from the care of children with exceptional needs.

**Pursuant to the delivery of short-term respite child care services, priority shall be given** for the provision of services to families identified and referred by child

protective agencies, to relieve the stress caused by child abuse, neglect, or exploitation, or the risks thereof. Priority shall be given to assist parents and to provide temporary relief to parents to the extent that resources are available. (Ed. Code, § 8212.3.)

## **Summary**

**There are many options for parents seeking child care.** You should assess your own needs and financial abilities in order to choose the child care option that best suits you and your family. A good starting point is to contact the Child Care Resource and Referral Network to find quality child care near you. The California Department of Education, Child Development Division, can answer your questions concerning state and federally-subsidized programs and direct you to the proper agencies.

To find the nearest resource and referral agency, look in the telephone book or contact:

### **California Child Care Resource and Referral Network**

809 Lincoln Way  
San Francisco, CA 94122  
(415) 661-1714

### **Licensing Agency**

Central Operations Branch  
Department of Social Services  
Community Care Licensing Division  
744 P Street, Mail Stop 19-50  
Sacramento, CA 95814  
Telephone: (916) 324-4031  
Fax: (916) 323-8352

### **Child Care Administrator**

Janet Poole  
Child Development Division  
California State Dept. of Education  
560 J Street, Suite 220  
Sacramento, CA 95814-4785  
Telephone: (916) 322-4240  
Telephone: (916) 322-6233 (Public Information)

Fax: (916) 323-6853  
E-mail: [jpoole@cde.ca.gov](mailto:jpoole@cde.ca.gov)

### **Head Start Collaboration Liaison**

Mary Smithberger  
California Head Start State Collaboration Project  
California Department of Education  
Child Development Division  
560 J Street  
Sacramento, CA 95814  
Telephone: (916) 323-1342  
Telephone: (916) 322-6233 ( Public Information)  
Fax: (916) 323-6853

### **Child Care Food Program Administrator**

Director  
Child Nutrition and Food Distribution Divisions  
State Department of Education  
560 J Street, Suite 270  
Sacramento, CA 95814  
P. O. Box 944272  
Sacramento, CA 94244-2720  
Telephone: (916) 322-2187 (800) 952-5609

### **Child Abuse Reporting Hotline**

Any state licensing office, any law enforcement office or any child protective office in any of the county social/health/welfare offices.

### **Office of Child Support Enforcement**

Office of Child Support  
Department of Social Services  
744 P Street  
Sacramento, Ca 95814  
P. O. Box 944244-2450  
Sacramento, CA 95814  
Telephone: (916) 654-1532

**State Home Pages** <http://www.state.ca.us/>

# CHAPTER NINE

## DIRECTORY OF SERVICES AND INFORMATION

This general directory lists various legal assistance agencies and other organizations that may be able to provide legal assistance and general information on the subjects discussed in this book. This directory is not a complete list of every women's organization in California, and addresses and/or telephone numbers may change. Many of the organizations listed here may be able to direct you to another organization that can help you with specific problems.

### General Legal Assistance

#### **Legal Aid Societies/Neighborhood Legal Assistance/Legal Services**

Legal aid societies are funded by the federal government and usually are open only to lower income people. Legal aid lawyers handle a wide range of problems, including ones particular to women, such as sex discrimination in housing, credit and employment.

An example of a legal aid society in San Francisco is the Neighborhood Legal Assistance Foundation. The Women's Litigation Unit is a section of this foundation that handles sex discrimination cases; the Domestic Relations Unit handles divorce cases.

**The Legal Services Corporation** is a private nonprofit corporation that funds various California legal aid societies. It will put you in touch with the legal aid society in your area.



**Legal Services Corporation**  
(202) 336-8800

## **American Civil Liberties Union**

The ACLU is a national, nonprofit organization handling many types of civil rights problems, including women's rights. The ACLU has its own lawyers and maintains a referral service to other organizations and women's groups that handle specific problems.

ACLU referral information numbers for major California cities are:

San Francisco	(415) 621-2488
Los Angeles	(213) 977-9500

Many local chapters of the ACLU have a referral hotline. Check your telephone directory.

## **Minority Legal Defense Groups**

Those groups are listed in the telephone directory under the name of the minority or sponsoring group. Examples are:

### **San Francisco**

- NAACP Legal Defense and Education Fund
- Mexican-American Legal Defense and Education Fund
- Asian Law Caucus

### **Los Angeles**

- NAACP Legal Defense and Education Fund
- Mexican-American Legal Defense and Education Fund
- Chicano Service Action Center
- Asian Law Collective

### **Sacramento**

- Asian Law Caucus
- NAACP Legal Defense and Education Fund
- Mexican-American Family Department, Family Legal Services

## **California Rural Legal Assistance, Inc. (CRLA)**

CRLA deals with age discrimination, employment discrimination, housing problems, pension disputes and nursing home conditions. Although CRLA concentrates on servicing community groups, it will refer individuals to other legal groups for assistance. Telephone numbers are:

San Francisco	(415) 864-3405
Sacramento	(916) 446-7901

## **Law Centers**

Many specialized law centers exist in California. Some of them are listed below:

### **San Francisco**

- Title VII Project, Lawyer's Committee for Urban Affairs, part of San Francisco Bar Association
- Youth Law Center
- Public Advocates
- Equal Rights Advocates, Inc.
- South Folsom Law Firm
- Asian Law Caucus
- San Francisco Consumer Action
- Lesbian Mothers Legal Aid
- Advocates for Women
- Community of Legal Services
- Employment Law Center
- Child Care Law Center
- La Casa de las Madres
- Legal Aid Society of San Francisco
- Lesbian Rights Project

### **Los Angeles**

- Youth Law Center
- National Senior Citizens Center
- Western Center on Law and Poverty
- Family Law Center
- Women's Litigation
- Legal Aid Foundation of Los Angeles
- The Women's Switchboard
- Barristers' Domestic Violence Project

- Battered Women's Legal Counseling Clinic
- Family Law Project
- Gay and Lesbian Legal Referral Services
- Women's Equal Rights Legal Defense and Education Fund
- Women's Legal Clinic

## **San Diego**

- Equal Rights Advisors, Inc.
- The Center for Women's Studies and Services
- Legal Clinic for Battered Women
- Legal Aid Society of San Diego
- YWCA's Battered Women's Services

## **Small Claims Court**

Every county has a small claims court -- a special court where people can sue without a lawyer to recover money or damages not exceeding \$5,000. (Code Civ. Proc., § 116.220.) Check with the small claims court in your county to determine if that court suits your needs. If your claim for money is higher than the limit, you may still file in small claims court, but the amount of your claim exceeding the limit will be forfeited and cannot be recovered in any court. Only by not using the small claims court and filing in a higher (municipal or superior) court can you ask for an amount greater than the limit. In small claims court, you cannot be represented by a lawyer -- you represent yourself. However, you can consult a lawyer beforehand and some counties offer free legal advice for small claims litigants.

If you are over 18 years of age, you can file a claim in small claims court. There is a small filing fee. For more information, contact the small claims court in your county and ask for an information booklet. It is important to be well-prepared when you present your claim before the judge in small claims court, and to have receipts and other evidence with you in court to support your claim. (See Code Civ. Proc., § 116 et seq.)

## **Lawyer Referral Services for Private Attorneys**

County and city bar associations and private lawyer referral services direct callers to local, private attorneys according to the specific legal problem. The first consultation with the attorney is usually provided at a minimum fee. If you decide to retain the attorney, you will be charged the regular attorneys' fees, and if you cannot afford this, you will be referred to a legal aid group. For lawyer referral, contact the bar association in your city or county or a lawyer referral service listed

in the yellow pages of your phone book.

## **District Attorney's Office, Family Support Unit**

Parents who need legal assistance to collect child support under a court order may get legal help from the Family Support Unit of their local district attorney's office. For phone numbers, check your local telephone book.

## **California Women Lawyers Association (CWL)**

**CWL** is a statewide organization of women attorneys. It maintains a referral list and can provide information about local women lawyers' organizations.

California Women Lawyers  
1303 J Street, Suite 400, Sacramento, CA 95814  
(916) 441-3703

## **Divorce: Alternative Services**

The Divorce Centers of California, Inc., is one of a number of organizations that offer nonlegal help in obtaining "do it yourself" divorces in California. Their fees for a regular divorce range from \$95 to \$150. For a summary divorce, the fee is \$50. The only additional cost is your particular county's filing fee. Divorce Centers has offices in Oakland, San Francisco, and Sacramento. Check your local telephone book for listings under "Divorce Assistance." The California Divorce Council also offers nonlegal assistance with divorces and is located at 2525 Van Ness, #206, San Francisco, CA 94109, telephone number, (415) 441-5157.

## **General Information for Women and Referral Services**

### **Commissions on the Status of Women**

There are **state** and **local** commissions on the status of women.

The **California Commission on the Status of Women** provides information and referrals to women. It does not handle legal cases, but it can refer you to agencies or organizations that may help you. The Commission maintains lists on domestic violence centers, rape crisis centers, women's centers, women studies organizations, YWCA organizations, and ethnic group organizations. The

Commission may be contacted at:

California Commission on the Status of Women  
1303 J Street, Room 400, Sacramento, CA 95814-2400  
(916) 445-3173

There are 31 city and county commissions on the status of women that provide various services to women. Look in the telephone book under your city and county to see if there is a local commission near you, or write to the California Commission for the group nearest you.

## **Law School Women's Organizations**

At most law schools in California there are women's law groups, consisting of women law students and women law professors. Most of these groups cannot take legal cases themselves, but they can be good sources of information, advice and referrals to other groups that can help you.

The University of California campuses that have law schools are:

UCLA  
UC San Francisco (Hastings)  
UC Berkeley  
UC Davis

There are also many private law schools in California. Check your phone directory for listings.

## **Women's Centers at Local Colleges and Universities**

Many colleges and universities in California have women's centers that can provide information and access to women's resources both on the campus and in the community.

Contact the college or university nearest you to find out if it has a women's resource center.

## **National Organization For Women (NOW)**

**NOW** has general information on women's issues and is a clearinghouse for women's problems and related action groups. **NOW** offices often have staff lawyers; if not, the office can usually refer you to a lawyer community legal office.

There are **NOW** offices in the following locations:

### **Los Angeles County**

NOW - San Fernando Valley  
P. O. Box 7141, Van Nuys, CA 91409  
(818) 769-2035  
NOW  
4232 Tujunga Avenue  
Studio City, CA 91604  
(818) 769-2035

### **Orange County**

NOW - North Orange County  
(714) 826-6512

### **Sacramento County**

NOW  
P. O. Box 1404, Sacramento, CA 95812  
(916) 443-3470

### **San Diego County**

NOW  
P. O. Box 80292, San Diego, CA 92138  
(619) 238-1824

### **San Francisco County**

NOW  
3543 18th Street, San Francisco, CA 94110  
(415) 861-8880

## **Other Women's Groups**

Many women's help groups have the word "women" in the name of the group. Look in the phone book under "women" for the names of particular groups to help you. Some examples are:

### **San Francisco**

**Women's Centers, Inc.**, a group that coordinates women's events in the Bay Area: (415) 431-1180

**Women Against Rape (WAR)**, offers physical and psychological therapy for women in trauma: (415) 647-7273 (24 hour crisis number)

## **Los Angeles**

**Women's Employment Action League**  
(Beverly Hills)  
(818) 345-1442

## **Organizations That Deal With Specific Issues**

Listed below you will find organizations that deal with issues of particular interest to many women. This is not a complete listing of all the organizations that deal with women's issues in California, but many of the organizations listed can help put you in touch with other organizations.

### **Battered Women's Shelters**

There are shelters and organizations in California that provide a safe place to stay, and counseling for women and their children whose safety is in danger as a result of beatings and other violence by their spouses and lovers. For emergency help and more information about where to find safety if you are in danger from your spouse or lover, contact your local law enforcement agency, police department, or sheriff. Many shelters have a 24-hour crisis "hotline" for telephone counseling. Listed below are the addresses and phone numbers for shelters in various counties. These addresses and phone numbers may become outdated, in which case you should check your local telephone directory under "Crisis Intervention Service" or call the Domestic Violence Branch of the Office of Criminal Justice Planning, (916) 323-7449.

### **Alameda County**

A Safe Place  
P. O. Box 1075, Oakland, CA 94604  
(510) 636-4747 (bus.)  
(510) 636-4740 (fax)

City of Berkeley  
2180 Milvia Street, Third Floor

Berkeley, CA 94704  
(510) 644-7744 (bus.)  
(510) 644-6494 (fax)

Family Violence Law Center  
P. O. Box 2529, Berkeley, CA 94702  
(510) 540-5370 (bus.)  
(510) 540-5373 (fax)

Fed. of Indo-Amer. Assoc./AASRA  
38256 Glenmoor Drive, Suite I  
Fremont, CA 94537  
(510) 505-7503 (bus.)      (510) 440-9509 (fax)

Emergency Shelter Program, Inc.  
22634 Second Street, #205  
Hayward, CA 94541  
(510) 581-5626 (bus.)  
(510) 581-5628 (fax)

San Leandro Shelter for Women & Children  
1395 Bancroft Avenue, Suite 13  
San Leandro, CA 94577  
(510) 357-0205 (bus.)  
(510) 357-0688 (fax)

Shelter Against Violent Environments  
P. O. Box 8283, Fremont, CA 94537  
(510) 794-6056 (bus.)  
(510) 794-6284 (fax)

Shepherd's Gate (Livermore)  
(510) 449-0163

Tri-Valley Haven for Women  
P. O. Box 2190  
Livermore, CA 94551  
(510) 449-5845 (bus.)  
(510) 449-2684 (fax)



## **Other Services for Victims of Domestic Violence in Alameda County**

### **Alameda County District Attorney Victim/Witness Assistance Program--**

1401 Lakeside Drive, Oakland, CA

510-272-6180

Toll-free from Livermore, Pleasanton, Dublin and Sunol: 510-862-2525

### **Alameda County Family Court Services--Pleasanton, 510-551-6892**

**Domestic Violence Law Project--** South County: 510-733-2071

### **Family Violence Law Center**

Oakland--510-893-3242

Berkeley-510-540-5354

### **Lawyer Referral Services**

Alameda County Bar

510-893-8683

Eastern Alameda County Bar

510-462-2714

### **Legal Aid Society of Alameda County, Domestic Violence Unit**

1815 Telegraph Avenue, Oakland

510-451-9261

Monday-Friday, 9 a.m.-12 noon; 1 p.m.-5 p.m.

### **Branch Office**

22531 Watkins Street, Hayward

By appointment, low income qualification, 510-538-6507

**Legal Aid--**510-449-6206; Tuesday, 9:30 a.m.-11:00 a.m.

(low income qualification)

**W.O.M.A.N., Inc.--**San Francisco, 24 hour service, 415-864-4722

## **Amador County**

Operation Care/Amador County Crisis Line (Jackson)

(209) 223-2600

## **Butte County**

Catalyst Women's Advocates, Inc.

P. O. Box 4184

Chico, CA 95927

(916) 343-7711 (bus.)  
(916) 343-3960 (fax)

### **Calaveras County**

Butte/Glen Women's Center  
P. O. Box 623  
San Andreas, CA 95249  
(916) 895-8476 or 1-(800) 895-8476

Human Resources Council, Inc.  
P. O. Box 919  
San Andreas, CA 95249  
(209) 754-1300 (bus.)  
(209) 754-4014 (fax)

### **Contra Costa County**

Battered Women's Alternatives  
P. O. Box 6406  
Concord, CA 94524  
(510) 676-2845 (bus.)  
(510) 676-2326 (fax)  
(415) 930-8300 (crisis)

### **Del Norte County**

Rural Human Services  
811 G Street  
Crescent City, CA 95531  
(707) 465-3013 (bus.)  
(707) 465-6464 (fax)

### **El Dorado County**

S. Lake Tahoe Women's Center  
3140 Lake Tahoe Boulevard  
South Lake Tahoe, CA 96150  
(916) 544-2118 (bus.)  
(916) 544-1134 (fax)

### **Fresno County**

YWCA

1600 M Street  
Fresno, CA 93721  
(209) 237-4706 (bus.)  
(209) 237-0420 (fax)

Fresno County Health Services Agency  
P. O. Box 11867  
Fresno, CA 93775  
(209) 445-3307 (bus.)  
(209) 445-3596 (fax)

### **Humboldt County**

Humboldt Women for Shelter  
P. O. Box 969  
Eureka, CA 95502  
(707) 444-9255 (bus.)  
(707) 444-3190 (fax)

### **Imperial County**

Woman Haven, Inc.  
395 Broadway, #5  
El Centro, CA 92243  
P. O. Box 2219  
El Centro, CA 92244  
(619) 353-6922 (bus.)  
(619) 353-8441 (fax)

### **Kern County**

Alliance Against Family Violence  
1921 19th Street  
Bakersfield, CA 93302  
P. O. Box 2054  
Bakersfield, CA 93303  
(805) 322-0931 (bus.)  
(805) 322-2916 (fax)

### **Kings County**

Kings Comm. Action Organization  
1222 West Lacey Boulevard, Suite 201  
Hanford, CA 93230  
(209) 582-4386 (bus.)

(209) 582-1536 (fax)

## **Lake County**

AWARE, Inc.  
2190 South Main Street  
Lakeport, CA 95453  
(707) 263-1133 (bus.)  
(707) 263-9237 (fax)

## **Los Angeles County**

Association to Aid Victims of DV  
P. O. Box 220037  
Newhall, CA 91322  
(805) 259-8175 (bus.)  
(805) 259-1194 (fax)

Center/Pacific-Asian Family, Inc.  
543 N. Fairfax Avenue, Room 108  
Los Angeles, CA 90036  
(213) 653-4045 (bus.)  
(213) 653-7913 (fax)

Dominguez Family Shelter  
P. O. Box 4943  
Carson, CA 90749  
(310) 715-6394 (bus.)  
(310) 715- 6236 (fax)

El Monte Youth Development Center  
3600 Penn Mar  
El Monte, CA 91732  
(818) 350-4029 (bus.)  
(818) 350-4038 (fax)

Haven Hills, Inc.  
P. O. Box 260  
Canoga Park, CA 91305  
(818) 887-7481 (bus.)

(818) 887-4796 (fax)

House of Ruth, Inc.  
P. O. Box 459  
Claremont, CA 91711  
(909) 623-4364 (bus.)  
(909) 629-9581 (fax)

Jewish Family Services of Los Angeles  
8134 Van Nuys Boulevard, Suite 300  
Panorama City, CA 91402  
(818) 906-5007 (bus.)  
(818) 782-2785 (fax)

Korean American Family Service Center  
610 S. Harvard Boulevard, Suite 230  
Los Angeles, CA 90005  
(213) 389-6755 (bus.)  
(231) 389-5172 (fax)

Los Angeles Com. Assaults Against Women  
6043 Hollywood Boulevard, Suite 200  
Los Angeles, CA 90028  
(213) 462-1281 (bus.)  
(213) 462-8434 (fax)

Rainbow Services  
P. O. Box 1925  
San Pedro, CA 90733  
(310) 548-5450 (bus.)  
(310) 548-0611 (fax)

1736 Family Crisis Center  
103 W. Torrance Boulevard, Suite 101  
Redondo Beach, CA 90277  
(310) 372-4674 (bus.)  
(310) 372-5336 (fax)

S. California Alcohol & Drug Prog.  
11500 Paramount Boulevard  
Downey, CA 90241  
(310) 869-6385 (bus.)  
(310) 862-0918 (fax)

Whosoever Will Christian Church

37707 Palm Vista  
Palmdale, CA 93550  
(805) 273-7502 (bus.)  
(805) 273-0667 (fax)

YWCA Glendale  
735 E. Lexington Drive  
Glendale, CA 91206  
(818) 242-4156 (bus.)  
(818) 240-6036 (fax)

YWCA Wings/San Gabriel Valley  
P. O. Box 1464  
West Covina, CA 91793  
(818) 915-5191 (bus.)  
(818) 858-6140 (fax)

Valley Oasis Shelter/Antelope  
P. O. Box 4226  
Lancaster, CA 93539  
(805) 949-1916 (bus.)  
(805) 940-3422 (fax)

Women's Shelter of Long Beach  
P. O. Box 32107  
Long Beach, CA 90832  
(310) 491-5362 (bus.)  
(310) 436-4982 (fax)

## **Madera County**

Madera County Action Committee  
1200 W. Maple Street  
Madera, CA 93637  
(209) 673-9173 (bus.)  
(209) 673-3223 (fax)

## **Marin County**

Marin Abused Women's Services  
1717 Fifth Avenue  
San Rafael, CA 94901  
(415) 457-2464 (bus.)

(415) 457-6457 (fax)

### **Mariposa County**

Mountain Crisis Services  
P. O. Box 2075  
Mariposa, CA 95338  
(209) 966-2350 (bus.)  
(209) 742-4246 (fax)

### **Mendocino County**

Project Sanctuary  
P. O. Box 995  
Ukiah, CA 95482  
(707) 462-9196 (bus.)  
(707) 462-5869 (fax)

### **Merced County**

A Woman's Place  
P. O. Box 822, Merced, CA 95341  
(209) 725-7900 (bus.)  
(209) 725-7908 (fax)

### **Modoc County**

T.E.A.C.H., Inc.  
112 East Second Street  
Alturas, CA 96101  
(916) 233-3111 (bus.)  
(916) 233-4744 (fax)

### **Mono County**

Wild Iris  
P. O. Box 7732  
Mammoth Lake, CA 93546  
(619) 934-2491 (bus.)  
(619) 873-8104 (fax)

### **Monterey County**

Shelter Plus  
P. O. Box 3584, Salinas, CA 93912  
(408) 442-3024 (bus.)  
(408) 442-3026 (fax)

## **Napa County**

Napa Emergency Women's Services  
P. O. Box 427, Napa, CA 94559  
(707) 252-3687 (bus.)  
(707) 252-3069 (fax)

## **Orange County**

Human Options  
P. O. Box 9376  
Newport Beach, CA 92658-9376  
(714) 737-5242 (bus.)  
(714) 737-5244 (fax)

Interval House  
P. O. Box 3356  
Seal Beach, CA 90740-2356  
(310) 594-9492 (bus.)  
(310) 596-3370 (fax)

Laura's House, YWCA  
97 Calle de Industrias  
San Clemente, CA 92672  
(714) 361-3775 (bus.)  
(714) 361-3548 (fax)

## **Placer County**

P.E.A.C.E. For Families  
P. O. Box 1227, Roseville, CA 95678  
(916) 773-7273 (bus.)  
(916) 773-8180 (fax)

Placer Women's Center, Inc.  
1254 High Street, P. O. Box 5462  
Auburn, CA 95603  
(916) 885-0443 (bus.)  
(916) 885-2347 (fax)



Tahoe Women's Services  
P. O. Box 1232, Kings Beach, CA 96143  
(916) 546-7804 (bus.)  
(916) 546-8474 (fax)

### **Plumas County**

Plumas Rural Services, Inc.  
P. O. Box 1079, Quincy, CA 95971  
(916) 283-5675 (bus.)  
(916) 283-3900 (fax)

### **Riverside County**

Alternatives to Domestic Violence  
P. O. Box 910, Riverside, CA 92502  
(909) 352-9262 (bus.)  
(909) 352-2716 (fax)

Shelter From the Storm, Inc.  
P. O. Box 781, Palm Desert, CA 92261  
(619) 328-7233 (bus.)  
(619) 770-7582 (fax)

### **Sacramento County**

WEAVE  
P. O. Box 161389, Sacramento, CA 95816  
(916) 448-2321 (bus.)  
(916) 443-7183 (fax)

### **San Bernardino County**

High Desert DV Program  
17100-B Bear Valley Road  
P. O. Box 284, Victorville, CA 92392  
(619) 244-0094 (bus.)  
(619) 244-0095 (fax)

Victor Valley Domestic Violence  
P. O. Box 2825, Victorville, CA 92393  
(619) 955-8010 (bus. phone and fax)

### **San Diego County**

Center for Community Solutions  
4508 Mission Bay Drive, San Diego, CA 92109  
(619) 233-8984 (bus.)  
(619) 272-5361 (fax)

Community Resource Center  
650 Second Street  
Encinitas, CA 92024  
(619) 753-1156 (bus.)  
(619) 753-0252 (fax)

EYE Counseling & Crisis Services  
200 North Ash  
Escondido, CA 92027  
(619) 747-6281 (bus.)  
(619) 747-1635 (fax)

Saint Clare's Home  
243 South Escondido Boulevard, Suite 120  
Escondido, CA 92025-4116  
(619) 741-0122 (bus.)  
(619) 741-1241 (fax)

South Bay Community Services  
315 Fourth Avenue, Suite E  
Chula Vista, CA 91910  
(619) 420-3620 (bus.)  
(619) 420-8722 (fax)

Womens' Resource Center  
1963 Apple Street  
Oceanside, CA 92054  
(619) 757-3500 (bus.)  
(619) 757-0680 (fax)

YWCA San Diego  
1012 C Street  
San Diego, CA 92101  
(619) 239-0355 (bus.)  
(619) 233-8545 (fax)

YMCA San Diego  
4715 Viewridge Avenue, Suite 10  
San Diego, CA 92123  
(619) 292-4034 (bus.)

(619) 292-0045 (fax)

## **San Francisco County**

Asian Women's Shelter  
3543 18th Street, Suite 19  
San Francisco, CA 94110  
(415) 751-7110 (bus.)  
(415) 751-0806 (fax)

La Casa de las Madres  
965 Mission Street, Suite 300  
San Francisco, CA 94103  
(415) 777-1808 (bus.)  
(415) 777-1348 (fax)

Florence Crittenton Services  
840 Broderick Street  
San Francisco, CA 94115-4499  
(415) 567-2357 (bus.)  
(415) 567-2476 (fax)

St. Vincent de Paul Society  
5616 Geary Boulevard, Suite 207  
San Francisco, CA 94121  
(415) 977-1270 (bus.)  
(415) 977-1271 (fax)

## **Other Services for Victims of Domestic Violence in San Francisco County:**

**Asian Law Caucus** provides legal counseling and representation for immigrant survivors of domestic violence. Services are free for low-income women. Assistance is offered in a variety of Asian languages, as well as in English, (415) 391-1655.

**Community United Against Violence (CUAV)** offers services specifically related to domestic violence cases involving lesbians, gay men, bisexuals, and transgender and transsexual people. Services include counseling, support groups and help getting temporary restraining orders, (415) 333-4357.

**Department of Public Health Rape Treatment Center** focuses on domestic violence. Among other things, health care workers can help people get the physical evidence they may need to make an assault case. Crisis intervention, medical care, and individual and group counseling are

also available, (415) 821-3222.

**Donaldina Cameron House** offers social services mostly to survivors of domestic violence. Assistance is available in Mandarin, Cantonese, Shanghaiese, Vietnamese, and English. Fees are based on a sliding scale, (415) 252-8900.

**Family Violence Prevention Fund** is a nonprofit organization dedicated to eliminating domestic violence. The agency offers referral services for counseling, legal, and housing services for survivors and works to educate the public and train educators who work in the community to prevent domestic violence, (415) 252-8900.

**Nihonmachi Legal Outreach** is a nonprofit legal organization that can help battered Asians and Pacific Islanders in a variety of languages. Services are offered on a sliding scale and are free to those on public assistance, (415) 567-6255.

**Riley Center** offers emergency shelter for battered women and their children, as well as long-term transitional housing. Services include peer counseling, referrals, children's counseling, and case-management advocacy, (415) 255-0165.

**San Francisco Bar Association** offers a cooperative restraining-order clinic for women who qualify under the Domestic Violence Protection Act. A staff attorney is available to take women through the process of obtaining a restraining order. Services are offered in Spanish and English, (415) 982-8416.

**San Francisco Legal Assistance Foundation** offers a cooperative restraining-order clinic by appointment once a week. For an appointment call (415) 864-4722. Representation is also available for low-income residents of San Francisco in eight languages, (415) 982-1300.

**W.O.M.A.N. Inc.** offers individual and group counseling for victims of domestic violence as well as a weekly restraining-order clinic. Thursday's noon-1:30 p.m. drop-in group session is free; other fees are based on a sliding scale. Services are offered in Spanish and in three South Asian languages, as well as in English. (Crisis hotline: (415) 864-4722.)

## **San Joaquin County**

Women's Center of San Joaquin County

620 North San Joaquin Street, Stockton, CA 95202  
(209) 941-2611 (bus.)  
(209) 941-4963 (fax)

### **San Luis Obispo County**

Women's Shelter Program/San Luis Obispo  
P. O. Box 125, San Luis Obispo, CA 93406  
(805) 781-6401 (bus.)  
(805) 781-6410 (fax)

### **San Mateo County**

Sor Juana Ines  
1860 El Camino Real, Suite 205, Burlingame, CA 94010  
(415) 259-1335 (bus.)  
(415) 259-1336 (fax)

### **Santa Barbara County**

Shelter Services for Women  
P. O. Box 1536, Santa Barbara, CA 93102  
(805) 963-4458 (bus.)  
(805) 963-1169 (fax)

### **Santa Clara County**

Discover Alternatives  
8120 Westwood Drive, Gilroy, CA 95020  
(408) 842-3118 (bus.)  
(408) 847-1685 (fax)

Next Door, Solutions to DV  
1181 N. Fourth Street, San Jose, CA 95112  
(408) 279-7550 (bus.)  
(408) 279-7562 (fax)

The Bridge Counseling Center/Comm. Solutions  
P. O. Box 546, Morgan Hill, CA 95038-0546  
(408) 779-2113 (bus.)  
(408) 778-9672 (fax)

### **Santa Cruz County**

Defense de Mujeres  
406 Main Street, Room 326, Watsonville, CA 95076  
(408) 722-4532 (bus.)  
(408) 722-4990 (fax)

Women's Crisis Support  
1658 Soquel Drive, Suite A, Santa Cruz, CA 95065  
(408) 477-4244 (bus.)  
(408) 477-4231 (fax)

### **Shasta County**

Shasta County Women's Refuge  
P. O. Box 994211, Redding, CA 96099-4211  
(916) 244-0117 (bus.);  
(916) 244-2653 (fax)

### **Siskiyou County**

Siskiyou DV Program  
P. O. Box 1679, Yreka, CA 96097  
(916) 842-6629 (bus.)  
(916) 842-9724 (fax)

### **Solano County**

Solano Women's Crisis Center  
P. O. Box 368, Fairfield, CA 94533  
(707) 422-7345 (bus.)  
(707) 422-7276 (fax)

### **Sonoma County**

County of Sonoma/DHS  
1030 Center Drive, Santa Rosa, CA 95403  
(707) 525-6580 (bus.)  
(707) 525-6519 (fax)

### **Stanislaus County**

Haven Women's Center of Stanislaus  
619 13th Street, Suite I, Modesto, CA 95354  
(209) 524-4331 (bus.)  
(209) 524-2045 (fax)

## **Sutter County**

Casa de Esperanza, Inc.  
P. O. Box 56, Yuba City, CA 95992  
(916) 674-5400 (bus.)  
(916) 674-8754 (fax)

## **Tehama County**

Alternatives to Violence  
721 Pine Street, Red Bluff, CA 96080  
(916) 528-8912 (bus.)  
(916) 528-9339 (fax)

## **Trinity County**

Human Response Network  
P. O. Box 2370 Weaverville, CA 96093  
(916) 623-2024 (bus.)  
(916) 623-6343 (fax)

## **Tulare County**

Family Services of Tulare County  
815 W. Oak, Visalia, CA 93291  
(209) 732-2514 (bus.)  
(209) 732-6404 (fax)

Porterville Women's Shelter  
P. O.Box 2033, 620 W. Olive Avenue, Porterville, CA 93258  
(209) 781-7462 (bus.)  
(209) 781-6240 (fax)

## **Ventura County**

Coalition to End Domestic & Sexual Violence  
2064 Eastman Avenue, Suite 104, Ventura, CA 93003  
(805) 654-8141 (bus.)  
(805) 654-1264 (fax)

Interface Children, Family Services  
1305 Del Norte Road, Suite 130, Camarillo, CA 93010

(805) 485-6114 (bus.)  
(805) 983-0789 (fax)

## **Yolo County**

Sexual Assault & DV Center  
927 Main Street, Suite A, Woodland, CA 95695  
(916) 661-6336 (bus.)  
(916) 661-3021 (fax)

For other resources, see Guardian Online at  
<http://www.sfbg.com/News/31/31/Features/services.html>.

See also National Coalition Against Domestic Violence, 1-800-333-7233 and  
National Domestic Violence/Abuse Hotline, 1-800-799-7233, TDD 1-800-787-  
3224

## **Rape Crisis Centers**

In 1978, the legislature enacted a grant program to provide support for existing local rape crisis centers and to encourage the establishment of other centers. Such centers must maintain 24-hour telephone counseling services for rape victims, as well as in-person counseling and referral services during normal business hours. Many of the rape crisis centers in California are listed below. (The general hotline is toll-free 1-800-448-8888.)

These numbers and addresses may become outdated, in which case you can contact the State Department of Social Services for an updated listing. Also, the lists of organizations concerned with rape and rape prevention are available from the California Commission on the Status of Women, 1303 J Street, Room 400, Sacramento, CA 95814-2400, or from the Sexual Assault Branch of the Office of Criminal Justice Planning, (916) 324-9120.

## **Alameda County**

Bay Area Women Against Rape  
c/o YWCA  
1515 Webster, Room 406  
Oakland, Ca 94612  
(510) 444-4326

Highland Hospital Sexual Assault Center  
1411 East 31st Street  
Oakland, CA 94602  
(510) 437-4688



Tri-Valley Haven for Women  
P. O. Box 2190  
Livermore, Ca 94551  
(510) 449-5842

### **Butte County**

Rape Crisis Intervention  
P. O. Box 423  
Chico, Ca 95927  
(916) 891-1331 (bus.)  
(916) 342 RAPE (crisis)

### **Contra Costa County**

East Contra Costa Rape Crisis Center  
301 West 10th Street, Suite 3  
Antioch, Ca 94509  
(415) 432-9838 (bus.)  
(415) 754-RAPE (crisis)

Rape Crisis Service of Central Contra Costa (Concord)  
2023 Vale Road, Suite 2  
San Pablo, Ca 94806  
(510) 798-7273

Rape Crisis Center of West Contra Costa  
c/o Brookside Hospital  
2023 Vale Road, Suite 2  
San Pablo, Ca 94806  
(415) 237-0113 (bus.)

(415) 236-RAPE (crisis)

### **El Dorado County**

El Dorado Women's Center  
3133 Gilmore Street  
Placerville, Ca 95667  
(916) 626-1450 (bus)  
(916) 626-1131 (crisis)

Womenspace, Unlimited  
3140 Lake Tahoe Blvd.  
P. O. Box 13111  
South Lake Tahoe, Ca 96150  
(916) 544-2118 (bus.)  
(916) 554-4444 (crisis)

### **Humboldt County**

Humboldt County Rape Crisis  
P. O. Box 543  
Eureka, Ca 95502  
(707) 443-2737 (bus.)  
(707) 445-2881 (crisis)

### **Inyo County**

Wild Iris Women's Services  
P. O. Box 679  
Bishop, Ca 93415  
  
(619) 873-6601 (bus.)  
(619) 873-7384 (crisis)

### **Kern County**

Rape Hotline of Kern County  
P. O. Box 9874  
Bakersfield, Ca 93389  
(805) 324-RAPE (crisis)

### **Los Angeles County**

Antelope Valley Sexual Assault Service  
Antelope Valley Hospital Medical Center  
1600 West Avenue J  
Lancaster, Ca 93534

(805) 949-5000 (bus.)

Barristers' Domestic Violence Project  
Los Angeles Superior Court  
111 North Hill Street  
Los Angeles, Ca 90012  
(Tues./Fri. 1:30-3:30 p.m.)

(213) 974-5544

Crisis Center-Temple Beth Hillel  
12326 Riverside Drive  
North Hollywood, Ca 91607  
(818) 763-9148

East Los Angeles Rape Hotline  
1255 South Atlantic Blvd.  
Los Angeles, Ca 90022  
1-800-585-6231

Haven Hills  
P. O. Box 2650  
Canoga Park, Ca 91305  
(818) 887-6589

Los Angeles Commission on Assault Against Women  
6043 Hollywood Blvd., Suite 200  
Los Angeles, Ca 90028  
(213) 462-1281

Pacific-Asian Rape/Battering Hotline  
543 North Fairfax, Room 1008  
Los Angeles, Ca 90036  
(213) 563-4045 (bus.)  
(213) 563-4042 (crisis)

Pasadena-Foothill Valley YWCA  
78 N. Marengo Avenue  
Pasadena, Ca 91101  
(818) 793-5171 (bus. & crisis line)  
(818) 793-3385 (crisis)  
(818) 793-5171 (crisis)

Project Sister/Sexual Assault Crisis Services  
P. O. Box 621  
Claremont, Ca 91711  
(909) 626-4357

Rape Treatment Center Santa Monica Hospital  
1250 16th Street  
Santa Monica, Ca 90404  
(310) 319-4000 (crisis)

Response Center Cedars-Sinai Medical Center  
8739 Alden Drive, Room C301  
Los Angeles, Ca 90048  
(310) 855-5000

San Gabriel Valley Rape Information Center  
78 N. Marengo  
Pasadena, Ca 91101  
(818) 793-3385 (hotline)

YWCA Sexual Assault Center-Compton YWCA  
1600 East Compton Blvd.  
Compton, Ca 90221  
(310) 763-9117

### **Marin County**

Rape Crisis Center of Marin  
70 Skyview Terrace  
San Rafael, Ca 94903  
(415) 924-2100

### **Mendocino County**

Project Sanctuary  
P. O. Box 995  
Ukiah, Ca 95482  
(707) 462-9196 (bus.)  
(707) 462-7988 (crisis)

### **Monterey County**

Monterey Rape Crisis Center  
P. O. Box 2630  
Monterey, Ca 93942  
(408) 373-3955 (bus.)  
(408) 375 HELP (crisis)  
(408) 424-RAPE (Castroville)

Women's Crisis Center of Salinas  
123 East Alisal Street  
P. O. Box 1805  
Salinas, Ca 93901  
(408) 757-1002 (bus.)  
(408) 757-1001 (crisis)

**Napa County**

Volunteer Center of Napa County  
1820 Jefferson Street  
Napa, Ca 94559  
(707) 252-6222 (office)  
(707) 258-8000 (hotline)

**Placer County**

Placer Women's Center, Inc.  
P.O. Box 5462  
Auburn, Ca 95604  
(916) 885-0443 (bus.)  
(916) 652-6558 (crisis)

**Riverside County**

Coachella Valley Rape Crisis  
619 Monroe Street, Suite 10  
Indio, Ca 92201  
(619) 347-8440 (bus.)  
(619) 568-9071 (crisis)

**Sacramento County**

WEAVE Counseling Center  
1900 K Street, 2nd Floor  
Sacramento, Ca 95816  
(916) 448-2321 (bus.)  
(916) 290-2952 (crisis)

**San Bernardino County**

San Bernardino Sexual Assault  
536 West 11th Street  
San Bernardino. Ca 92401  
(909) 885-8884 (bus.)  
(909) 895-8884 (crisis)

**San Diego County**

Center for Women's Studies and Services  
(619) 233-8984 (bus.)  
(619) 233-3088 (crisis)

County Counseling & Crisis Services  
200 North Ash  
Escondido, Ca 92027  
(619) 747-6281

### **San Francisco County**

San Francisco Women Against Rape  
3543 18th Street, #7  
San Francisco, Ca 94110  
(415) 861-2020 (bus.)  
(415) 647-RAPE (crisis)

### **San Joaquin County**

Sexual Assault Center  
c/o The Women's Center of San Joaquin County  
620 North San Joaquin  
Stockton, Ca 95202  
(209) 941-2611 (bus.)  
(209) 465-4997 (hotline)

### **San Luis Obispo County**

San Luis Obispo Victim/Witness Assistance Center  
Room 121, County Government Center  
San Luis Obispo, Ca 93408  
(805) 781-5821 (bus./victim witness)

### **San Mateo County**

Suicide Prevention & Crisis Center of San Mateo County  
1860 El Camino Real, #400  
Burlingame, Ca 94010  
(415) 692-6662 (bus.)  
(415) 726-6655 (hotline)

### **Santa Barbara County**

Crisis Intervention of Lompoc-Rape Crises  
c/o The Family Service Agency  
122 North G Street  
Lompoc, Ca 93436  
(805) 734-2711 (bus.)

(805) 734-2711 (crisis)

Santa Barbara Rape Crisis Center  
111 North Milpas  
Santa Barbara, Ca 93103  
(805) 963-6832 (bus.)  
(805) 564-3696 (crisis)

### **Santa Clara County**

YWCA in Santa Clara Valley Rape Crisis Center  
375 So. Third Street  
San Jose, Ca 95112  
(408) 295-4011 (bus.)  
(408) 287-3000 (crisis)

Women's Rape Crisis Center  
4161 Alma Street  
Palo Alto, Ca 94306  
(415) 493-7273

### **Shasta County**

Shasta County Women's Refuge  
P. O. Box 4211  
Redding, Ca 96099  
(916) 244-0117 (bus. crisis/24 hr.)

Inter Mountain Community Center  
(This has the same address as the one above)  
(916) 336-1044 (bus. Crisis) (East County)

### **Sonoma County**

Rape Crisis Center of Sonoma County  
P. O. Box 1426  
Santa Rosa, Ca 95402  
(707) 545-7270 (bus.)  
(707) 545-7273 (crisis)

### **Stanislaus County**

Haven Women Center  
619 13th Street, Suite I  
Modesto, Ca 95354

(209) 524-4331 (bus)  
(209) 527-5558 (hotline)  
(209) 527-9942 (hotline)  
(209) 522-0331 (24 hour line)  
(800) 990-7223 (hotline)  
(800) 557-5980 (domestic violence hotline)  
(800) 834-1990 (domestic violence hotline)

### **Sutter County**

Casa de Esperanza, Inc.  
P. O. Box 56  
Yuba City, Ca 95992  
(916) 674-5400 (bus.)  
(916) 657-2040 (crisis)

### **Tuolumne County**

Mountain Womens Resource Center  
P. O. Box 1154  
Sonora, Ca 95370  
(209) 533-3401 (bus./crisis)

### **Yolo County**

Sexual Assault & Domestic Violence Center  
927 Main Street, Suite A  
Woodland, Ca 95695  
(916) 661-6336 (bus.)  
(916) 662-1133 (crisis)

**National Resource:** Rape, Abuse and Incest National  
Network (RAINN), 1-800-656-4673

## **Victims of Violent Crime**

Information and application forms about compensation to victims of violent crimes may be obtained from the state Board of Control in Sacramento, California, or from a local victim/witness program or other law enforcement agency involved. Contact:

California Board of Control  
Victims of Violent Crimes  
P. O. Box 3036



Sacramento, Ca 95812-3036  
(916) 322-4426 (800) 777-9229

## **Other Helpful Numbers**

### **Counseling and Services**

#### **Los Angeles County**

Airport Marina Counseling Center (sliding scale)  
7891 La Tijera Blvd.  
Westchester, Ca 90045  
(310) 670-1410

Friends of the Family  
14522 Kittridge Street  
Van Nuys, Ca 91405  
(818) 988-4430

#### **Orange County**

Women's Center  
901 West Orangethorpe Avenue  
Fullerton, Ca 92832  
(714) 441-0411

#### **Sacramento County**

Women's Infant-Children Program  
2251 Slorin Road, Suite 100  
Sacramento, Ca 95822-4833  
(916) 427-5500

Women's Infant Care Program, YWCA  
1122 17th Street  
Sacramento, Ca 95814  
(916) 264-8080

#### **San Diego County**

Women's Resource Center  
1963 Apple Street  
Oceanside, Ca 92054  
(619) 757-3500

## **San Francisco County**

Gray Panthers of San Francisco  
325 9th Street  
San Francisco, Ca 94103  
(415) 552-8800

## **Stanislaus County**

Women's Center of Stanislaus  
619 13th Street, Suite I  
Stanislaus, Ca 95354  
(209) 576-0659

## **Child Abuse/Runaway Hotlines**

Children of the Night  
14530 Sylvan Street  
Van Nuys, Ca 91411  
P. O. Box 4343  
Hollywood, Ca 90078  
(818) 908-4470 (bus.)  
(800) 551-1300 (crisis)(nationwide hotline)

Family Stress  
15157 Roscoe Blvd.  
Panorama City, Ca 91402  
(818) 830-0200 (bus.)

Thursday's Child's Teen Crisis Line-L.A.  
24100 Hartland Street  
West Hills, Ca 91307-2926  
(818) 712-0159 (office)  
(818) 710-1181 (hotline)

The Committee to Prevent Child Abuse Helpline  
1-800 - CHILDREN

## **Child Care**

Every county has at least one child care resource and referral agency that can help you locate quality child care.

**For legal questions relating to child care contact:**

Child Care Law Center  
22 Second Street, 5th Floor  
San Francisco, Ca 94105  
(415) 495-5498

**For information about state subsidized child care contact:**

California Department of Education  
Child Development Division  
560 J Street, #220  
Sacramento, Ca 95814  
(916) 657-2451

## **Education**

For information or help with discrimination in education, contact:

**State**

State Universities and Colleges  
Coordinator, Campus Title IX Office

University of California:  
Chancellor's Office

Community College Board:  
Campus Dean of Student Personnel  
Services or Instruction

Superintendent of Public Instruction  
K-12 Schools  
Title IX Assistance Office  
State Department of Education  
721 Capitol Mall  
P. O. Box 944272  
Sacramento, Ca 94244-2070  
(916) 657-2451

Sex Equity in Education Project (Project SEE)

State Department of Education  
P. O. Box 944272  
Sacramento, Ca 94244-2070  
(916) 657-2451

### **In General**

California Attorney General's Office  
Public Inquiry Unit  
1300 I Street  
P. O. Box 944255  
Sacramento, Ca 94244-25059  
(916) 322-3360 (Callers calling inside of California)  
(800) 952-5225 (Callers calling from outside of California)

### **Federal**

United States Department of Education  
Office for Civil Rights  
50 United Nations Plaza, Room 239  
San Francisco, Ca 94102  
(415) 437-7700

## **Employment**

### **California Department of Fair Employment and Housing**

Offices located at: San Francisco (northern headquarters), Los Angeles (southern headquarters), Fresno, Oakland, San Bernardino, San Diego, San Jose, Sacramento, Bakersfield, Santa Ana and Ventura. Toll-free telephone number: (800) 884-1684.

**California Department of Industrial Relations, Division of Labor Law Enforcement,** district offices in Bakersfield, Burlingame, El Centro, Eureka, Fresno, Inglewood, Long Beach, Los Angeles, Oakland, Panorama City, Pomona, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton and Vallejo.

## **Worker's Compensation Appeals Boards**

### **San Francisco County**

45 Fremont Street, 31st Floor  
San Francisco, Ca 94105  
P. O. Box 420603  
San Francisco, Ca 94105  
(415) 557-2720

### **Los Angeles County**

107 South Broadway, Room 4107  
Los Angeles, Ca 90012-4460  
(213) 897-1446

### **San Diego County**

1350 Front Street, Room 3047  
San Diego, Ca 92101-3690  
(619) 525-4589

## **Equal Employment Opportunity Commission**

Offices in: San Francisco, Los Angeles, San Diego,  
Fresno, Oakland and San Jose

## **Office of Federal Contract Compliance, Labor Department**

Labor Department  
1301 Clay Street, Suite 1080 North Tower  
Oakland, Ca 94612  
(510) 637-2938

## **Health**

### **Special Supplemental Food Program for Women, Infants and Children (WIC)**

Los Angeles-Southern Regional WIC office  
Sacramento-Public Health Agency  
San Francisco-district health centers (five branches or the following: Mt. Zion Hospital,  
San Francisco General Hospital, Potrero Hill Health Center, San Francisco Head Start  
Office, South of Market Health Center, St. Mary's Clinic)

San Diego-Vista Health Center, South Bay Health Center, South East Health Center, the Red Cross.

You may also write or call

WIC Supplemental Food Section  
Department of Health Services  
3901 Lennane Drive  
Sacramento, Ca 95834  
(916) 928-8500

## **AIDS**

For information about women and AIDS contact:

San Francisco AIDS Foundation  
10 United Nations Plaza, 4th Floor, Suite 405  
San Francisco, Ca 94102  
(415) 487-3000 (office)  
(415) 863-2437 (crisis)

(415) 863-AIDS (San Francisco)(trilingual AIDS hotline)

Sacramento AIDS Foundation  
1500 21st Street  
Sacramento, Ca 95814  
(916) 454-0516

Progressive House Services (HIV testing and referrals)  
8240 Santa Monica Boulevard  
West Hollywood, Ca 90046  
(213) 650-1508

### **AIDS Hotlines:**

San Francisco AIDS Foundation hotline:

(415) 863-AIDS (In San Francisco)(trilingual AIDS hotline)  
(800) FOR AIDS (if you are calling from Northern California)

### **Southern California AIDS hotline:**

(213) 876-AIDS (In Los Angeles)

(800) 922-AIDS (if you are calling from Southern California)

## **Long-Term Illness**

Office of the State Long-Term Care Ombudsman  
California Department of Aging  
1600 K Street  
Sacramento, Ca 95814  
(916) 322-3887

## **Housing**

If you have problems or questions regarding housing discrimination, you may want to contact one of the following governmental agencies:

### **California Department of Fair Employment and Housing**

2014 T Street, Suite 210  
Sacramento, Ca 95814-6835

District offices are located in Bakersfield, Fresno, Los Angeles, Oakland, Sacramento, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana and Ventura. Toll-free telephone number: (800) 884-1684.

### **United States Department of Housing and Urban Development**

777 12th Street, Suite 200  
Sacramento, Ca 95814-1997  
(800) 669-9777

1615 West Olympic Boulevard  
Los Angeles, Ca 90015-3801  
(800) 669-9777

450 Golden Gate  
San Francisco, Ca 94102  
(800) 669-9777

(HUD may be able to assist in problems of discrimination in federally funded housing and rental properties)

## **Insurance**

## **California Department of Insurance, Policy Services Bureau**

300 Capitol Mall, 15th Floor  
Sacramento, Ca 95814  
(213) 897-8921  
(800) 927-4357 (callers calling in State)  
(213) 897-8921 (callers calling Out of State)

Offices in Los Angeles, San Francisco, and Sacramento. Call to file discrimination complaints or ask questions about these types of insurance: Medical, automobile, life or private disability.

## **Unemployment Insurance/State Disability Insurance**

### **California Employment Development Department**

800 Capitol Mall  
P. O. Box 826880  
Sacramento, Ca 94280-0001  
(916) 653-0707 (General Information)

Offices in Los Angeles, San Francisco, Sacramento, San Diego and many other locations. Call or visit your local office to file a claim or ask questions about state disability or unemployment insurance benefits.

## **Public Assistance**

### **Food Stamps**

Your county's social services department can assist you with this program.

### **Supplemental Security Income (SSI)**

You can call the Social Security Administration of the United States Department of Health and Human Services and ask for the Supplemental Security Income Program.

### **State Disability Insurance**

Contact the California Employment Development Department and ask about disability claims. You can also contact a private attorney.



## **Medi-Cal**

You can call the California Department of Health Services and ask for the Medi-Cal program.